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Director's Decisions for California

Small Tract

1960-1970

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DOCKET FILES

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[illegible]

DOCKET FILES LO(Sac)

appeal to Sec
affirmed A-28399 8-23-60

SMALL TRACTS * 2 Applications

PUBLIC LANDS * 7 Withdrawals

Land included in a power site withdrawal is not subject to disposition under the Small Tract Act, and applications therefor cannot be suspended to await the possible restoration of the land but must be rejected.

Curtis Carl Larson et al., Sacramento 059395, etc. (January 12, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 059395, etc.
5.04g

January 12, 1960

Certified Mail
Return Receipt Requested

DECISION

Curtis Carl Larson et al. 1/ : Small Tract Applications

Decision Affirmed

Mr. Curtis C. Larson and 16 other persons 1/ have appealed from a decision of the Manager dated October 2, 1959, rejecting their small tract applications filed under the act of June 1, 1938 (43 U.S.C., 1952 ed., Supp. V, sec. 682a et seq.), for certain tracts of land located within the NW$\frac{1}{4}$SE$\frac{1}{4}$, Sec. 25, T. 26 S., R. 32 E., M.D.M., California. The applications were rejected for the reason that the land was withdrawn, by Executive Order of September 7, 1917, from settlement, location, sale or entry, in Power Site Reserve No. 655, under the act of June 25, 1910 (36 Stat. 847).

The appellants do not cite any error in the Manager's decision, but assert that a petition for the restoration of the land from the withdrawal has been submitted to the Federal Power Commission. The appellants state that the Federal Power Commission has advised them that the petition will be considered. They request that action be withheld on their small tract applications until a final determination is made by the Federal Power Commission on their petition for the restoration of the land from the power site withdrawal.

It has been well established by the Department that applications for land that has been withdrawn from all forms of settlement, location, sale or entry, must be rejected and cannot be suspended to await the lifting of the withdrawal and the possible restoration of the land to disposition under the public land laws. John Rovetto, A-27521 (December 9, 1957).

Accordingly, the Manager's decision is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as

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1/ See attached Appendix "A" for names of appellants and serial numbers of appealed cases.

amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each appellant taking an appeal. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Each appellant listed on Appendix "A" (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

APPENDIX "A"

Name	Serial Number
	Sacramento
Curtis Carl Larson	059395 ✓
Alverta G. Larrison	059396 ✓
Donald R. Redfearn	059397 ✓
James Ian Martin	059398 ✓
Kenneth G. Gunsauls	059399 ✓
Helen H. Gossett	059400 ✓
James E. McGlenn	059401 ✓
Veronica B. Altermatt	059402 ✓
Wilbert W. Dean	059403 ✓
Donald Ray Wilson	059404 ✓
Clark J. Roarty	059409 ✓
Edith Sharp	059410 ✓
Harley Sharp	059411 ✓
Darrel D. Altermatt	059412 ✓
Blanche M. Altermatt	059413 ✓
Ruth J. Morris	059473 ✓
Roy Morris	059474 ✓

L O (Sac)

DOCKET FILES

SMALL TRACTS * 1 Generally
* 7 Value of Improvements

Where a small tract lease was issued for land embraced in a mining claim, and the mining claim was subsequently declared to be null and void, the lease is not vitiated thereby.

Where a small tract lessee may adopt improvements of a former mining claimant of the land for his own use, he will ordinarily be required, as a condition precedent to the issuance of a lease, to agree to pay the former occupant the reasonable value of those improvements of use to him; but where a small tract lessee enters the leasehold and adopts improvements to his own use, the compensation, if any, for the use thereof is a private matter between the parties and there is no statutory or regulatory authority in the Department to compel payment therefor.

Irvin E. Azbill et al., Sacramento 048567 January 13, 1960

In reply refer to:

Sacramento 048567
Contest 5270
(Sacramento)
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

January 13, 1960

Irvin E. Azbill, Lessee, and Gerald B. Bailey, Proposed Assignee	:	Small Tract Lease (Sacramento 048567)
United States v. John P. Morris	:	Mining Claims (Contest 5270)

Decision Affirmed

Mr. Morris has appealed from a decision of the Manager, Sacramento Land Office, dated February 9, 1959, insofar as it dismissed his protest against the small tract lease, Sacramento 048567, issued to Irvin E. Azbill.

The appellant's mining claims, the Blue Jay and Little Mary, were located in the early 1940's and included, among other lands, lot 63, sec. 18, T. 33 N., R. 9 W., M.D.M., California (4.42 acres). A small tract lease, effective February 14, 1955, was issued to Mr. Azbill for lot 63. The Bureau, when apprised of existing mining claims, initiated contest proceedings against Mr. Morris; the complaint charged the claims to be void for the reason that the land is nonmineral in character and that minerals have not been found within the limits of the claims in sufficient quantities to constitute valid discoveries. The charges were taken as confessed by reason of the contestee's failure to deny them. 43 CFR 221.62, 221.65. Thereafter, by the decision of February 9, the mining claims were declared null and void.

The Azbill application described improvements on lot 63 as "One small shed of No Value". Regardless of the showing of such improvement, a lease for lot 63 was issued to him. A proposed assignment from Azbill to Gerald B. Bailey has been submitted for approval; a renewal application has also been filed. The appellant has protested against a renewal of the lease and seeks cancellation thereof. He alleges ownership of the improvements, a right to recompense therefor, and/or that he be allowed to file application under the Small Tract Act for lot 63.

By his decision, the Manager held the mining claims void; he dismissed the appellant's protest and allowed him 90 days in which to remove his improvements. The appellant's appeal is directed only to so much of that decision as dismissed his protest.

Ordinarily a lease under the Small Tract Act will not be issued for lands covered by a mining claim. In the instant case, the Bureau had no knowledge of the outstanding mining claims and did issue a lease after the land had been classified for small tract purposes. Since the mining claims are no longer in being, they having been declared null and void, and no fraud 1/ in the obtaining of the lease being ascribable to the lessee, the lease, issued under authority of law is a binding contract and must be recognized and honored by the Government in accordance with its terms. It follows that the assignment and renewal thereof, if all else be regular may be approved; upon fulfillment of the lease terms a patent may issue. 2/

The gravamen of appellant's protest and appeal appears to relate to compensation for his improvements now used by the lessee. It appears that the parties have been negotiating between themselves concerning the value thereof and have not reached agreement. This appears to be a private dispute between the parties. The difficulties may be resolved by private agreement, arbitration, or by a court of competent jurisdiction. Cf. John H. Corridon, A-27390 (February 18, 1957). The Bureau has ordinarily allowed a mining claimant, whose claim has been invalidated, a reasonable period of time (usually 90 days) in which to remove his improvements; also, where a small tract lease is issued for lands containing improvements to require that the lessee pay to the former occupant (the owner of the improvements) the fair market value of such improvements as will be of use to the lessee.

The Manager's decision is affirmed.

When this decision becomes final the case record will be returned through the Bureau's State Supervisor, for the further appropriate processing of the proposed assignment and renewal application indicated by this decision.

Mr. Morris is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

1/ The Government had knowledge of the existence of "One small shed of No Value" by reason of Morris' statement in his application. Determinations of value are, of course, a matter of judgment and fraud is not to be raised by sheer conjecture.

2/ This is not a determination of the merits of the application for renewal or the assignment; such determinations will be made by the Manager consonant with applicable law and regulations.

In the event of appeal, the adverse parties to be served are:

Mr. Irvin E. Azbill P. O. Box 572 Weaverville, California	and	Mr. Gerald R. Bailey Box 651 Weaverville, California

Edward Worley
Director

Enclosure

DISTRIBUTION:

Halpin, Halpin & Leep, Attorneys at Law (Certified Mail)
Mr. John P. Morris (Regular Mail)
Mr. Irvin E. Azbill (Regular Mail)
Mr. Gerald R. Bailey (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
BF

DOCKET FILES LO(Lee)

SMALL TRACT * 2 Application

PUBLIC LANDS * 7 Withdrawals

Small tract applications within a powersite classification must be rejected and will not be suspended to await possible lifting of the withdrawal and restoration of the lands to entry.

Ray John Dyas et al., Sacramento 058993, etc. (January 18, 1960)

LO

In reply refer to:

Sacramento 058993, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 18, 1960

Certified Mail
Return Receipt Requested

DECISION

Ray John Dyas et al. : Small Tract Applications

Decision of the Manager Affirmed

Mr. Ray John Dyas and 9 others whose names are listed in the attached appendix have appealed from a decision of the Manager, dated July 23, 1959, rejecting their small tract applications for the reason that the lands for which they have applied are withdrawn from entry, location and other disposition under the public land laws.

The lands for which the appellants have applied, small tracts within the NE$\frac{1}{4}$SW$\frac{1}{4}$ and S$\frac{1}{2}$SW$\frac{1}{4}$, section 25, T. 26 S., R. 32 E., M.D.M., California, are included in Power Site Classification No. 267. Lands classified or reserved for power site purposes are not open to any form of appropriation or disposition, except as otherwise specifically provided by law, until the land has been restored to entry under the terms of section 24 of the Federal Power Act, Instructions, 47 L.D. 595 (1920). Lee Kisner et al., A-27189 (November 7, 1955); Duane B. Smithers, A-25858 (May 31, 1950).

Small tract applications for the land may not, however, be suspended to await restoration of the land to entry or disposition and then be considered as though filed immediately after the land is restored to entry. Effie Ellen Cox, A-27175 (December 12, 1955). The settled rule that no rights are acquired by an application, if, when it is made, the land sought is not subject to appropriation, applies to applications for unrestored powersite lands. John LaRay Hunt, Jr. v. State of Utah, A-24029 (May 16, 1945).

The transmission line withdrawal, to which the appeals are directed, is separate from the Power Site Classification discussed above and was effected by Power Site Reserve No. 656. A power withdrawal for transmission line purposes solely is not a legal bar to the allowance of small tract applications, 43 CFR 103.5. However, in the instant cases, Power Site Classification No. 267 precludes such allowance at the present time and the applications were properly rejected.

The decision of the Manager is, accordingly, affirmed.

Each of the appellants is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all 10 applications adversely affected by this decision the total filing fee is $50. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. Thomas H. Kuchel, United States Senate
Each appellant listed in Appendix "A" (Certified Mail)
Appeals List No. 1
Lands Staff Officer
LLM

APPENDIX "A"

Name and Address	Sacramento Serial Number
Mr. Ray J. Dyas 2220 Taldmage Street Los Angeles 27, California	058993 ✓
Mrs. Dorothy B. Malis 317 First Street Manhatten Beach, California	058999 ✓
Mr. Ronald R. Sheahan 1342 North Detroit Los Angeles 46, California	059003 ✓
Mr. Philip E. Schlickbernd 3407 Drew Street Los Angeles 65, California	059004 ✓
Mrs. Rose M. Greening 12514 Moorpark North Hollywood, California	059005 ✓
Mr. Harry C. Guard 516 North Reno Los Angeles 26, California	059006 ✓
Mr. Italo J. D'Angelo 2914 Gleneden Street Los Angeles 39, California	059007 ✓
Mr. Edward C. Rossez 233 North Kenmore Avenue Los Angeles 4, California	059008 ✓
Mr. Randolph F. Wilson 3131 Madera Avenue Los Angeles 48, California	059010 ✓
Mr. Arthur H. Hodges 300 S. Swall Drive Los Angeles 48, California	059014 ✓

DOCKET FILES

SMALL TRACTS * 2 Applications
* 3 Classification

It is proper to reject a small tract application where the lands are improper for small tract development and it is in the public interest to retain the lands for grazing, wildlife and recreational purposes.

Dorothy Irene Foltz, Sacramento 058756 (January 21, 1960)

LO(Sac)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 058756
5.04g

January 21, 1960

Certified Mail
Return Receipt Requested

DECISION

Dorothy Irene Foltz	:	Small Tract

Decision of the Manager Affirmed

Mrs. Dorothy Irene Foltz has appealed from a decision of the Manager, dated August 31, 1959, rejecting her small tract application for the stated reasons that the lands are more valuable for grazing, wildlife, and recreation, the lands are topographically unsuitable for small tract settlement, and disposition would require the Bureau to engage in complex subdivisional planning and surveys.

The lands in question are located in section 35, T. 26 S., R. 32 E., M.D.M., Kern County, California, which was determined to be improper for small tract development, and it was held to be in the public interest to retain the section for grazing, wildlife and recreation (hunting) purposes, by a decision of the Director dated September 17, 1959, approved by the Assistant Secretary of the Interior October 2, 1959. Spencer R. Wright et al., Sacramento 057462 (September 17, 1959).

The appellant's statement of reasons adduces no substantial and probative evidence to controvert the findings made.

The decision of the Manager is, accordingly, affirmed.

Mrs. Foltz is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

Enclosure

For the Director

DISTRIBUTION:
Mrs. Dorothy Irene Foltz (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

LO

66752-60

In reply refer to:

Los Angeles 0121306
5.04g

January 22, 1950
6

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

Iva Cleo Slusser : Small Tract Lease
:
:

Decision of the Acting Manager Vacated; Case Remanded

Iva Cleo Slusser has appealed from a decision of the Acting Manager which suspended her lease issued pursuant to the act of June 1, 1938, as amended (43 U.S.C., 682a)1/ because it had been found that there were mining claims upon the land.

There is no evidence of record to show upon what the Acting Manager based his finding that "a portion of the land embraced in /Iva Cleo Slusser's/ above referenced small tract lease is covered with mining claims which were located prior to date of the order classifying the land in question for small tract purposes." The field reports, which would not in any event have been sufficient to support this finding, were made subsequent to the date of his decision. Accordingly, for this reason alone, the decision must be reversed.

The lease-sale agreement between Miss Slusser and the Government vests in her, upon the performance by her of all the conditions precedent specified in the lease and by regulation, a right to purchase the land and to the issuance of a patent, 43 CFR 257.13. Consequently, even assuming there was some evidence to support the Acting Manager's finding, he erred in suspending her lease. The customary practice of the Bureau, followed in cases such as this, is to proceed with action leading to the issuance of the patent and, at the same time, give actual notice in writing of the proposed action to known conflicting mining claimants advising them that they must within 30 days, file a complaint in accordance with 43 CFR 221 against the application to purchase or lose their rights. They should also be advised that the burden of proof will be upon them to establish the validity of their asserted prior mining claims.

If, after complaint and hearing, it is determined that there are valid prior mining claims on the land embraced within Miss Slusser's application but that they only cover a portion thereof, then, to the extent such land is not covered by said claim or claims, it should be offered for sale to her.

Accordingly, the case is remanded to the Manager through the Assistant to the State Supervisor, Bureau of Land Management, for further consideration as outlined above.

Karl J. Thomas
Acting Director

DISTRIBUTION:
Miss Iva Cleo Slusser (Regular Mail)
Minerals Staff Officer (1)
Lands Staff Officer (1)
Appeals List No. 1
CFG

LO(Sac)

DOCKET FILES

SMALL TRACT * 1 Generally

* 6 Sales

A decision of the Acting Manager which suspended a small tract lease on the grounds that the lands involved may be embraced by valid mining claims will be vacated and the case remanded for further appropriate consideration if after complaint and hearing, it is determined that mining claims exist the small tract lessee will be allowed to purchase any portion of the land leased not covered by the mining claim or claims.

Iva Cleo Slusser, Los Angeles 0121306 (January 22, 1960)

DOCKET FILES

L(Sec)

SMALL TRACTS * 5 Renewals

VETERANS * 3 Soldiers' and Sailors' Relief Act

ADJUDICATION * 4 Reliance

An application for renewal of a small tract lease is properly rejected where no showing is made that the lessee's failure to apply for the purchase of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship upon him.

Benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, do not apply to renewal of a small tract lease by a serviceman who was in military service when the lease offer was filed.

Misinformation from Bureau employees, given to a private person cannot vest in him any rights not authorized by law.

RL Sidney Hendrickson, Los Angeles 0139311 (January 26, 1960)

RO

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0139311
5.04g

January 26, 1960

Certified Mail
Return Receipt Requested

DECISION

RL Sidney Hendrickson	:	Small Tract

Decision Affirmed

Mr. RL Sidney Hendrickson has appealed from the decision of the Manager, dated October 8, 1959, rejecting his application to renew his small tract lease for the stated reason that the appellant had not made the required showing under 43 CFR, Sec. 257.15(c).1/

The small tract lease, issued effective June 1, 1956, for a 3-year term, stated that the land was to be used for residence and recreation purposes and that the lessee agreed to construct substantial improvements upon the land during the term of the lease. On May 20, 1959, the appellant filed application to renew the lease. In the application appellant stated that he had been unable to make the required improvements on the lease and that denial of the application would cause extreme hardship to him and his family due to the fact he was transferred to Japan in June, 1957, and thus has not had the opportunity to select a suitable building site nor to make arrangements for the construction of the building, but that he would return to the United States in July 1960 and would then be able to meet the requirements of the lease. Appellant asserts that while in Japan he corresponded with some construction firms in the area but found the expense involved would cause an extreme hardship to him and his family.

Mere financial hardship does not justify a failure to construct the required improvements. Louis E. Levitan, Los Angeles 0112233

1/ "Where the land has been classified for lease and sale, renewals will be approved only upon a satisfactory showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee."

(April 15, 1959). The fact that appellant was transferred to Japan far away from the vicinity of the tract also does not afford an excuse. Louis E. Levitan, supra. As a matter of fact, approximately a year - one-third of the lease term - had passed before he received his transfer orders. A member of the military services could reasonably expect to be transferred from time to time and should plan accordingly when entering into a lease which requires obligations on his part to be fulfilled before acquiring further rights. His transfer cannot be considered as a justifiable basis for noncompliance with the improvement requirements of his lease. If Mr. Hendrickson had entered the military service after filing the offer the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. App., 1952, sec. 501 et seq.) may have afforded him relief. However, as he was a member of the armed services when he filed the offer the benefits of that Act do not apply to him. Russel L. Coe, A-27527 (January 24, 1958).

Mr. Hendrickson stated that his father-in-law had received information that he could obtain an extension for the lease while he was overseas. This, of course, is not tantamount to a commitment to renew the lease. Even if the father-in-law had received misinformation from a Bureau employee, the Department would not be bound by such misinformation. Fred and Mildred M. Bohen et al., 63 I.D. 65 (1956). A person relying on such information cannot obtain rights which have not been authorized by law. Arthur Joseph Moylan, Jr., Los Angeles 0144775 (July 9, 1959).

Since the record does not disclose that the appellant has expended any money on the development of the tract, it appears that no hardship would result from the denial of a lease renewal. Cf. Jimmie Deones, A-27539 (February 11, 1958).

The decision of the Manager is affirmed.

Mr. RL Sidney Hendrickson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

RL S. Hendrickson, M/Sgt., USAF (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JB

appeal to Sec
affirmed A-28452 1-18-61

DOCKET FILES

SMALL TRACT * 5 Renewal of Leases

The Manager properly rejected an application to renew a small tract lease issued for lease and sale, where the lessee had placed no improvements on the land during the lease term, and there is not a satisfactory showing that failure to meet the requirements for sale of the tract is justified and that nonrenewal of the lease will work an extreme hardship on the lessee.

Thomas C. Connelly, et al., Los Angeles 0144989 (January 26, 1960)

In reply refer to:

Los Angeles 0144989 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 26, 1960

Certified Mail
Return Receipt Requested

DECISION

Thomas C. Connelly et al. 1/ : Small Tract

:

:

Decision Affirmed

Thomas C. Connelly and eight others have appealed from decisions of the Acting Manager, dated September 28, 1959 and October 8, 1959 which rejected their applications for renewal of their small tract leases for the stated reasons that they have not complied with the regulation (43 CFR 257.15 (c)) which provides in pertinent part that before a lease can be renewed it must be shown:

> " * * *that lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal would work an extreme hardship on the lessee."

The appellants have contended that their leases should be renewed for various and sundry reasons such as (1) illness in the family, (2) inability to secure the services of a contractor, (3) employment required their absence from the country, and (4) lack of funds, but they have failed to present any persuasive evidence showing that nonrenewal would work an extreme hardship as required by the regulation.

The records reveal that none of the appellants have placed any improvements on the leased tracts nor have they expended any funds to improve the land in any way as required by the provision of the lease.

1/			
	Laurence T. Donovan	Los Angeles	0101953
	Patricia A. Kelly	" "	0147867
	Wanda Neely	" "	0147997
	Robert T. Dwan	" "	0124075
	George W. McLaughlin	" "	0124220
	Ruth A. Thomas	" "	0129339
	Stanley S. Kogut	" "	0143716
	Melvin S. Ferguson	" "	0144018

The Department has previously held that an application for renewal is properly rejected where land has been classified for lease and sale and there is not a satisfactory showing that failure to meet the requirements for sale of the tract is justified and that nonrenewal of the lease will work an extreme hardship on the lessee. Amandus James John Jansen, A-27883 (April 20, 1959).

Accordingly, the Acting Manager's decisions are affirmed.

Thomas C. Connelly, et al., are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each renewal application included in the appeal. If the appeal covers all of the renewal applications adversely affected by this decision the total filing fee is $45.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:
Thomas C. Connelly (Certified Mail)
Patricia A. Kelly (Regular Mail)
Edward J. Kelly, Attorney at Law (Certified Mail)
Laurence T. Donovan (Certified Mail)
Wanda Neely Coldiron (Certified Mail)
Robert T. Dwan (Certified Mail)
George W. McLaughlin (Certified Mail)
Ruth A. Thomas (Regular Mail)
Wyneken & Krueckeberg, Attorneys at Law (Certified Mail)
Stanley S. Kogut (Certified Mail)
Melvin S. Ferguson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JSS

appeal to Sec 4-7-60
affirmed A-28430 1-26-61

DOCKET FILES

SMALL TRACTS * 3 Classification

CLASSIFICATION * 1 Generally

Small tract applications for lands highly valuable for public recreational purposes are properly rejected where the record indicates that the lands are needed to meet ever increasing demands for camp sites, picnic grounds, and other public recreational purposes.

Arabelle Hoover et al., Sac ~~Los Angeles~~ 053931, etc. (January 29, 1960)

In reply refer to:

Sacramento 053931 etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Arabelle Hoover *et al.* : Small Tract Applications
:
:

Decision of the Manager Affirmed

Arabelle Hoover and the other small tract applicants listed in Appendix "A" attached have appealed from a decision of the Manager of November 4, 1959, which rejected their small tract applications filed pursuant to the Act of June 1, 1938 (43 U.S.C. 1958 ed., sec. 682a *et seq.*), 2/ because the lands are valuable for recreation and are required and needed for public recreational purposes.

The appellants allege that 5 acres of the lands in the NW¼NW¼ sec. 12 were classified pursuant to classification order No. 574 on July 23, 1959, for direct sale to Merrill G. Sampson pursuant to his small tract application Sacramento 053932. However, the record indicates that Mr. Sampson had placed valuable improvements upon the land in connection with mining operations in the area. Moreover, the fact that certain similar type lands in the vicinity have been classified as suitable for disposal under the Small Tract Act does not foreclose a classification of the lands here involved as primarily valuable for public recreational purposes at this time. See *Acting Solicitor's Opinion* 61 I.D. 277, 278 (1954). The appellants also allege that there have already been 17 areas allotted for recreational purposes which have never been developed for that purpose. They also assert that the public has unrestricted use of adjacent National forest lands.

1/ For the names of the applicants and the corresponding land office serial numbers see Appendix "A" attached.
2/ Small Tract Act.

The record reveals that the lands are located along and adjacent to the Kenn River about four miles south from Lake Isabella in Kern County, California. Field reports state that the lands are valuable for public recreational purposes which opinion is concurred in by the National Park Service. The reports reveal that the Lake Isabella area in which the lands are located is about 50 miles from Bakersfield, California and about 150 miles from Los Angeles, and that the Lake Isabella area consitutes a very important recreational outlet to a large segment of the population of Southern California. The reports reveal further that population demands for recreation facilities are continually on the increase. In summation, the lands have a high recreational potential and are required for public recreational purposes to meet the expanding public demand therefor.

Kern County has an extensive recreational development program underway covering lands near Lake Isabella and near the lands here in issue. The Director, Kern County Park and Recreation Department has advised this Bureau that the County wants to develop more camp areas and other facilities to meet the expanding public demand for recreation and has expressed an interest in the lands involved for use in connection with the County's development program.

Real estate values in the vicinity of Lake Isabella are very high due to the influx of population into the area for recreational pursuits. It is therefore to the advantage of both public and private agencies concerned with recreational developments to acquire vacant public lands for that use whenever public lands of appropriate character are available. It is our view that the allowance of the small tract applications to serve only the individual recreational needs of the small tract applicants here involved, would not be in the public interest, particularly when considered in relation to the demand for the lands for public recreational use. This view is consistent with the Bureau's decision in Madeline Annie Albert et al., Sacramento 050009 etc. (May 16, 1958) involving other similar type lands in the vicinity of Lake Isabella and of the Department in Leroy E. Cassou et al., A-27600 etc. (August 26, 1958). It also conforms to the public recreation and land use policy statement of the Department of April 16, 1958.

In the circumstances, we believe that the lands are primarily valuable for development as a part of a public recreational program and the small tract applications were properly rejected.

Therefore, the decision of the Manager is affirmed.

Arabelle Hoover and other appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $110.00. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

Distribution on page 3

DISTRIBUTION:
Mr. H. S. Gilmore, Attorney at Law (Certified Mail)
Each Appellant Listed on Appendix "A" (Certified Mail)
Land Staff Officer
Appeals List No. 1
Kernville Area File
CFG

APPENDIX "A"

Name	Serial No. (Sacramento)
Arabelle Hoover	053931
William Gorrell	054816
Clifford V. Weatherly	054817
Charles M. McKinney	054818
Earl E. Sharp	054819
Charles H. Bechtel	054820
Wilbur R. Barclay	054821
Milton Campbell	054822
Edward G. Cantwell	054823
Frank L. Lamb	054824
Barbara Ann Williams	058531
Mary Jane Comesky	058532
Gerrid C. Joy	058533
Calvin O. Joy	058534
Ralph C. Kingsbury	058535
Gordon Drake	058538
Ruth E. Cramer	058539
Florence L. Eddleman	058711
Jeanette E. Drake	058712
Betty O. Corrigan	058713
Robert E. Corrigan	058714
Harold C. Waltrip	058781

L OSac)

DOCKET FILES

SMALL TRACTS * 3 Classification

PUBLIC SALE * 3 Classification

Where the development of land for small tracts would impose a burden on the local government, involve the Bureau in complex surveys and create administrative problems, it is proper to reclassify the land for disposition in one transaction under the Public Sale Law.

Howard R. Mills et al., Los Angeles 064594, etc. (February 17, 1960)

RO

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 064594
064608
064609
5.04g

February 17, 1960

Certified Mail
Return Receipt Requested

DECISION

Howard R. Mills :
Harry W. Pedler : Small Tract
Scott Eugene Miller :

Decision Affirmed

The above named persons have appealed from the decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated July 17, 1959, rejecting their applications for small tracts on the ground that the land is not suitable for individual small tract development.

The records show that the small tracts involved are a part of a tract of 71.20 acres which was classified for small tract purposes in 1945, but that the land was not opened to small tract application and no leases were issued. That classification has been revoked and the land has been reclassified as not suitable for small tract disposal.

The County of San Diego, California, has objected to the allowance of any small tract entries on the land for the following reasons:

1. The tracts in question are approximately 300 feet west of the county road but they cannot be reached from that road because the terrain is very steep.

2. Although access may be possible through privately-owned land, the owners may not be agreeable to granting a right-of-way.

3. The grid pattern of the lots is such that some of the roads would require grades considerably greater than the maximum of 15% established by the Road Commission.

4. The 30 foot road easements do not meet county standards which require that in most cases streets in a subdivision be 60 feet wide.

5. Water service is not possible unless the area is annexed to the water district.

6. Unless a continuous water pressure of at least 20 pounds per square inch can be maintained permits for the installation of septic tanks will not be issued.

7. County regulations require that some form of sewage disposal system, approved by the Health Department, must be made available to any property before a building permit will be issued.

The reclassification report shows that reservations for rights-of-way which would provide access to the various lots cannot be made without first completing an extensive and costly cadastral survey of the land.

It is apparent from the foregoing that the development of that land for small tracts would not only impose a heavy burden on the local government, and involve the Bureau in complex subdivisional planning and surveys, but it would create innumerable administrative problems in the disposal or management of the lands in that subdivision.

The Department has held that where the disposition of land as small tracts would require a survey and would result in an administrative burden, it is in the public interest to dispose of the land in its entirety at public sale in one transaction. James J. Kendrew, A-27145 (April 8, 1955).

For the reasons stated, the revocation of the small tract classification and the reclassification of the land for disposal under the Public Sale Law was proper. Accordingly, the decision of the Chief, Land Adjudication Unit, is affirmed.

Each of the above-named appellants is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. In taking an appeal there must be strict compliance with the regulations.

In the event that an appeal is taken, the adverse party to be served with notice thereof is:

Valley Center Farms
c/o Howard C. Fletcher
940 South Alameda Street
Los Angeles, California

For the Director:

Enclosure

Distribution on page 3

DISTRIBUTION:

Mr. Robert F. Tyler, Attorney at Law (Certified Mail)
Mr. Howard R. Mills (Regular Mail)
Mr. Harry W. Pedler (Regular Mail)
Mr. Scott Eugene Miller (Regular Mail)
Valley Center Farms (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

LO(ac)

DOCKET FILES

SMALL TRACT * 5 Renewals

An application for renewal of a small tract lease is properly rejected, where the lessee's only reason for failure to meet the lease requirements to place improvements on the land is that he before filing of the lease offer was, and still is, in the military service, and no showing is made that nonrenewal of the lease would work an extreme hardship upon him.

John I. Rustin, Los Angeles 060888 (February 26, 1960)

In reply refer to:
Los Angeles 060888
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 26, 1960

Certified Mail
Return Receipt Requested

DECISION

John I. Rustin : Small Tract Renewal
:
:

Decision Affirmed

John I. Rustin has appealed from a decision of the Manager, dated February 11, 1954, rejecting an application for the fourth renewal of his small tract lease for the stated reason that he has failed to place any valuable permanent improvements on the leased land.

Appellant's lease for the land was issued February 12, 1946 for a period of 5-years and subsequently renewed on three different occasions for 1-year periods. Thus the appellant had eight years under the terms of his lease and renewal leases within which to place improvements on the land and thereby qualify for purchase of the tract.

The appellant's reason for failing to place improvements on the land is that he has been in military service since approximately 1927, and was required to be absent from the United States and from the immediate vicinity of the leased land. He states, however, that during the times he is in the vicinity, he frequently used the tract as a camp site.

The reasons asserted by the appellant that his military service and its requirements prevented him from carrying out the provisions of the lease, cannot be considered sufficient justification for his failure to erect suitable improvements on the land. Russell L. Coe, A-27527 (January 24, 1958). There were no requirements that the appellant do the work himself or live in the vicinity of the leased land. Ernest J. Van Loon, A-27087 (April 12, 1955).

The record shows that on February 18, 1952, the appellant filed a notice for the purpose of invoking the provisions of the Soldiers' and Sailors' Civil Relief Act of October 17, 1940. The Department has held that this act cannot be construed to apply to persons who initiated or acquired any interest in the public domain while already a member of the military service, and a lessee under the Small Tract Act who was a member of the military service at the time his lease offer was filed cannot secure any relief on the basis of that act. Russell L. Coe, supra.

The record fails to reveal any evidence that the appellant has expended any funds to place improvements on the leased land or that nonrenewal of the lease would work an extreme hardship on him. A small tract lessee is not entitled to a renewal of his lease where he has failed to construct improvements on the tract as provided by the terms of the lease, and where he fails to show that there is a justifiable basis for excusing his failure to do so and that non-renewal of the lease will work an extreme hardship on him. Russell L. Coe, supra; Amandus James John Jansen, A-27883 (April 20, 1959). Since the appellant placed no structure on the leased land and did not expend any money on the development of the tract, nonrenewal of the lease would not be an extreme hardship for him. George R. Maness et al., Los Angeles 097210 etc., (August 19, 1958).

Accordingly, the decision of the Manager is affirmed.

John I. Rustin is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

DISTRIBUTION:

Mr. John I. Rustin (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JJS

DOCKET FILES

L O (Sac)

SMALL TRACT * 1 Generally

RULES OF PRACTICE * 1 Generally

Where before an an appeal from a decision cancelling a small tract lease is decided the term of the lease has expired and the lessee has not timely filed a renewal application, or improved the tract, the appeal is moot and is properly dismissed.

Harold A. Draper, Los Angeles 087718 (February 29, 1960)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 087718
5.04g

February 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Harold A. Draper : Small Tract Lease

Appeal Dismissed

Mr. Harold A. Draper has appealed from a decision of the Manager, dated August 28, 1952, which canceled his small tract lease, issued May 4, 1949, because of asserted misrepresentations made in his application therefor by Mr. Draper.

The appellant stated in his lease application, filed April 5, 1948, that he had personally examined the land for which he was applying as described in the application and that the land was not then improved, occupied or used. There was, however, a 25' x 17' adobe house upon this land at the time of the alleged examination by the appellant. In his appeal the appellant nevertheless alleges that he did not knowingly make a false statement concerning the house since he had inadvertently examined the wrong land.

Mr. Draper's lease expired by its own terms on May 3, 1954. There is nothing of record to indicate that he filed for a renewal of the lease under the provisions of 43 CFR, 1958 Supp., 257.15(c). He did not construct improvements on the tract during the term of the lease. The fact that the lease had been held for cancellation by the Manager did not excuse Mr. Draper from compliance with the provisions of the lease including those relating to improvement of the tract. Cf. Padgett v. Bell, 13 L.D. 271 (1891); Duncan Miller, B. E. Chamberlin, A-27458 (August 12, 1957). Indeed, at the time the lease was held for cancellation over three years had elapsed since the issuance of the lease and Mr. Draper had not placed improvements on the tract.

Since Mr. Draper's lease terminated by operation of law on May 3, 1954, he now has no interest in the lease which a decision on his appeal can affect.

Therefore, as the question raised in the appeal is moot, the appeal is hereby dismissed. Cf. Zelph S. Calder et al., A-26372 (June 27, 1952); C. S. Glascoe, A-25389 (May 3, 1949); Duncan Miller, B. E. Chamberlin, supra.

Mr. Draper is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

In the event an appeal is taken by Mr. Draper, the adverse party to be served will be:

Mr. Orville Moore
Box 651
Trona, California

When and if the land in question is again made available for small tract disposition, the person acquiring the land or a lease thereon must reimburse the owner of the improvements now upon the tract for the reasonable value of the permanent improvements left on the land which are of value to him as a condition precedent to acquiring the land.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Harold A. Draper (Certified Mail)
Mr. Orville Moore (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

L O&(a)

DOCKET FILES

PUBLIC LANDS * 7 Withdrawals :

SMALL TRACTS * 2 Applications

A small tract application for land withdrawn for power purposes is properly rejected.

Jack Morse, Sr., Sacramento 059305 (March 2, 1960)

LO

In reply refer to:

Sacramento 059305
5.04g

March 2, 1960

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Jack Morse, Sr. : Small Tract Application

Decision Affirmed

Mr. Morse has appealed from a decision rejecting his small tract application for the stated reason the land applied for was withdrawn at the time the application was filed.

The land involved was withdrawn under date of February 25, 1953, for Power Project No. 2128, under Section 24 of the Act of June 10, 1920, as amended (16 U.S.C. 818), and was reserved from entry, location or other disposition.

The Small Tract Act, as amended (43 U.S.C. 682a), authorizes the Secretary of the Interior to lease a tract of not exceeding 5 acres "* * *of any vacant, unreserved, public lands, public lands withdrawn by Executive Order No. 6910 of November 26, 1934, and 6964 of February 5, 1935 * * * or public lands withdrawn or reserved by the Secretary of the Interior for any purposes * * * (Emphasis supplied)." The Department has held that the Secretary is precluded from disposing of any withdrawn lands under the Small Tract Act other than the exceptions underlined above. Bud E. Burnaugh, A-27356 (September 4, 1956); Ernest E. Wissman, A-25750, (January 20, 1950). Consequently a lease offer under the Small Tract Act must be rejected where the land applied for is withdrawn for power purposes. Lee Kisner et al., A-27189 (November 7, 1955).

The appellant asserts that: the land has been held as a mining claim and taxes paid on it prior to the withdrawal of the land; he has made valuable improvements on the property and had been living on it; and further the land is a small isolated piece that a Valuation Engineer of the Bureau upon inspection stated could no longer be held as a mining claim, but title to it could be obtained as a home site under the Small Tract Act. The existence of a mining claim held by the applicant does not give the applicant under the Small Tract Act any greater right than he would have had otherwise

If a representative of the Bureau misinformed the appellant, this would not operate to vest in the appellant any right not authorized by law. Cf. R. M. Harris, A-26215 (July 24, 1951).

The decision of the Manager is affirmed.

Mr. Jack Morse, Sr., is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Mr. Jack Morse, Sr., (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JJS

DOCKET FILES

10 Sac

SMALL TRACTS * 1 Generally
* 2 Applications

Lands withdrawn from all forms of appropriation under the public land laws and included in a Public Water Reserve by an Executive Order, are not subject to classification under the Small Tract Act, and it is proper to reject applications for land so withdrawn.

Joan M. Frazier et al., Los Angeles 0139612, etc. (March 4, 1960)

In reply refer to:

Los Angeles 0139612, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 4, 1960

Certified Mail
Return Receipt Requested

DECISION

	:	
Joan M. Frazier et al.	:	Small Tract Applications
	:	

Decision Affirmed

Mrs. Joan M. Frazier and 14 other applicants [1] have appealed from a decision of the Acting Manager of the Land Office, Los Angeles, California, dated September 2, 1959, rejecting their applications filed under the Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682a), for the reason that the land applied for is withdrawn from all forms of entry, settlement, location, or sale, and included in a Public Water Reserve No. 22, California No. 4. The land, which comprises Lots 7 and 8, Sec. 4, T. 3 N., R. 1 E., S.B.M., California, was withdrawn for the water reserve pursuant to the act of June 25, 1910 (43 U.S.C., sec. 141-143).

The appellants have not specifically pointed out any error in the Acting Manager's decision. However, they contend in substance that the Bureau has previously restored and disposed of other land in the immediate vicinity from the withdrawal for the Public Water Reserve No. 22, and therefore the land applied for by them should also be restored from the withdrawal. The appellants also contend that they do not want to acquire the land for speculative purposes. The appellants assert that they have awaited action in their applications since 1956, when they were filed in the Land Office, and meanwhile they have lost out on the opportunity to acquire suitable small tracts in other areas. For these reasons the appellants request that the matter be reconsidered, and a decision be issued restoring the land to application or entry from the present withdrawal in order that their small tract applications may be approved.

---

[1] The names of the small tract applicants and the serial numbers of their applications are shown on the attached Appendix "A".

The Small Tract Act authorizes the Secretary of the Interior to lease tracts not exceeding 5 acres of any vacant, unreserved public lands, public lands withdrawn by Executive Orders Numbered 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, or public lands withdrawn or reserved by the Secretary of the Interior for any purposes, which the Secretary may classify as chiefly valuable for the purposes enumerated in the act. The land applied for by the appellants was withdrawn from all forms of appropriation under the public land laws for Public Water Reserve No. 22 pursuant to the act of June 25, 1910, supra, which provides that such withdrawals may be made by Executive Order issued by the President of the United States. The Department has held that the Secretary is precluded from disposing of withdrawn lands other than under the exceptions underlined above. Cf. Bud E. Burnaugh, A-27356 (September 4, 1956); Arwin P. Curran, Sr., A-27474 (August 20, 1957). Consequently, an application for a lease under the Small Tract Act must be rejected for land included in a withdrawal for a public water reserve made by Executive Order.

With respect to the appellants' requests that the land be restored from the withdrawal and opened to appropriation under the public land laws in order that their small tract applications may be approved, application may be made for restoration of the land. However, an application for the restoration of land from a withdrawal does not afford the applicant therefor any prior right to the land if and when it is restored. Moreover, it has been well established that an application for land withdrawn from all forms of appropriation under the public land laws, including the small tract act, cannot be suspended pending the possible lifting of the withdrawal. Cf. James W. Hammond, A-24634 (July 7, 1947); John Rovetto, A-27521 (December 9, 1957). Furthermore, if and when the land is restored from the public water reserve to entry under the Small Tract Act, or other public land laws, it will be subject to the preference right of the State of California to select the land as indemnity school land for a period of six months after restoration, pursuant to sec. 2(c) of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. sec. 852(c)).

In the circumstances, it was proper to reject the small tract applications, and the decision appealed from is affirmed.

All of the appellants listed in the Appendix "A" are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If appeals are taken the amount of the filing fee will be $5.00 for each person filing an appeal. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure
Distribution on page 3

DISTRIBUTION:

Each person listed on Appendix "A" (Certified Mail)
Hon. D. S. Saund, House of Representatives, Washington 25, D. C.
Lands Staff Officer
Appeals List No. 1
RBO

APPENDIX "A"

Name	Serial Number (Los Angeles)
Mrs. Joan M. Frazier	0139612
Mrs. Pearl Olie McCuistion	0139657
Dr. Edward P. Spana	0139661
Mr. Harold Fitz Patrick	0139841
Mr. Melbourne Frank Keegan	0139842
Mr. George A. Gilbertsen	0139856
Mr. Donald Casaletti	0139857
Mr. George H. Hollinger	0139858
Mrs. Mildred Nation	0139898
Mr. Harold Zenz	0139906
Mr. William Patterson Buttery	0139908
Mrs. Eutha Jo Torrance	0139909
Mr. Donald T. Cosby	0139914
Mr. Daniel D. Mikesell	0139916
Mr. Anthony Colombero	0139987

LO (Sac)

DOCKET FILES

SMALL TRACT	*	1	Generally
	*	2	Application
	*	3	Classification
RECREATION ACT	*	1	Generally
PUBLIC LANDS	*	2	Accretion
	*	5	Islands

It is proper to reject a small tract application for land that has been classified as being more suitable for disposal for recreation and public purposes.

An area of land which has existed as an unsurveyed island within the meandered boundaries of a navigable or non-navigable lake or stream of water when the state in which it is located was admitted to the Union, is not subject to riparian right claims of bordering land owners since the land is not part of the beds of such bodies of water. Neither can the land be claimed as accreted land since it is a separate and distinct area of land not formed by accretion.

Jack Laverne Brouard, BLM 049369 (March 9, 1960)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

BLM 049369
5.04g

March 9, 1960

Certified Mail
Return Receipt Requested

DECISION

Jack Laverne Brouard : Small Tract Application

Decision Affirmed

Mr. Jack Laverne Brouard has appealed from a decision of the Chief, Lands Adjudication Section, Eastern States Land Office, rejecting his above-identified small tract application for the reason that the land has been classified as being more suitable for public recreational purposes.

The land in question is comprised of an island within the meandered boundaries of Warner Lake, and is described as Lot 1, section 18, T. 1 N., R. 10 W., Michigan Meridian, containing 6.03 acres. The land was recently surveyed as omitted land, and the plat of survey was accepted January 28, 1959. The island is located about one-half mile north and three-fourths mile east of Doster, Michigan. Another small tract application, BLM 045309 was filed for the same land, but was rejected and the case closed. The Kalamazoo County Council of Girl Scouts have filed an application, BLM 047712, under the Recreation and Public Purposes Act of June 24, 1926 (44 Stat. 741), as amended, and an application, BLM 047711 under the Color-of-Title Act of December 22, 1928 (45 Stat. 1069), as amended, for the same land.

A report of field examination in connection with the various applications for the land indicates that/it is suitably located and desirable for recreational purposes because of its gentle slope, and sandy shoreline. The island is covered with a fairly heavy growth of hardwood trees. The land is accessible either by land over a private dirt road and trail, or by boat over the lake surrounding it. There are no improvements on the island. Some 30-to 40 years ago, an owner of land in the SE¼, Sec. 18, Mr. Joseph Tomb, had a part time home thereon. The island has been connected at its southwesterly point to the mainland shore by an unused roadway fill. The lowering of the lake level has created a near-drained area of the lake on the island's westerly side, which is an area of shallow water, filled with lilies and other aquatic growth. The island is currently used by the Girl Scouts, whose main camp is on the northeast shore of Warner Lake, as an overnight camp site.

The appellant contends in substance that the land is not an island but a peninsula, and contiguous to land owned by him, and that he has title to the land because it has been formed by accretion and become attached to his owned land. The appellant further contends that the lands are not suitable for nor subject to purchase under the recreation act because there is no ingress or egress, and use of the island by the Kalamazoo County Council of Girl Scouts, Inc., a private non-profit corporation or organization is not a public recreational use. The appellant asserts that the Girl Scouts have other land on which they have a camp, but it has no contiguous relation to the land in question. The appellant further asserts that he is a veteran of World War II and filed his small tract application for the island within 90 days after the plat of survey thereof was officially filed. The appellant concludes that for the reasons cited by him, there is no valid reason for the sale of the land under the recreation or color of title act, and that his application for a lease of the land under the small tract act should be approved. The appellant further suggests that if his application under the small tract act cannot be approved that he be permitted to file a claim as owner of adjoining land who has preference right to purchase the land under the public sale provisiions of Section 2455 of the Revised Statutes (43 U.S.C., sec. 1171).

The contention of the appellant that title to the island is vested in him because it has been formed by accretion and is attached to land owned by him is without merit. The nature of the island, its formation and elevation and the timber growth thereon attests to its presence in 1837, when Michigan gained statehood, as a separate and distinct body of land, definitely above the mean water level of Warner Lake. In fact, the island was in existence in 1826 when the first survey was made of Warner Lake, although omitted from that survey.

It has been well established that, even though the United States may have parted with its title to the mainland, an island in any meandered body of water, navigable or non-navigable, known or proven to be in existence at the date of the admission of a State into the Union, and at the date of the survey of the mainland, if omitted from the original survey, remains public lands of the United States, and as such the island is subject to survey. This is because such islands were not then a part of the bed of the stream or body of water, and therefore title remained in the United States, subject to survey and disposal when identified. Cf. *Moss* v. *Ramey*, 239 U.S. 538 (1916); *Emma S. Peterson*, 39 L.D. 566 (1911). The riparian right that attaches to the lots along the meander line of the mainland pertains only to the bed of the stream, and to such islands as may form within the bed *subsequent* to the disposal of the title. The appellant therefore has no valid claim to the island as accreted land, and has no valid claim as a riparian owner because it was in existence when the State of Michigan was admitted to the Union.

The appellant's contention that the island is not suitable for disposal under the recreation act because there is no ingress and egress thereto, is also untenable, as the records show that the island is accessible not only by land but also by boat. The fact that Warner Lake provides a place for boating, and the island a place for outdoor activities adds to its value for recreational activities contemplated by the Girl Scout organization. It is not necessary that an applicant under the recreation act own land contiguous to the land sought as intimated by the appellant. Its use as proposed by the Girl Scouts is a public use within the meaning of the recreation and public purposes act.

The fact that the appellant filed his small tract application for the land as a veteran, during the 90 day period after the filing of the plat of survey approved January 28, 1959, would give him no vested right in land. The filing of applications during veterans preference right periods merely confers a right to the veteran in the priority of filing as against a nonveteran. Moreover, it is well established that the mere filing of an application for lands which are opened to certain types of entry does not secure any rights to the applicant other than to have his application duly considered. Cf. Leonard E. Moran, Harry C. Perry, A-27174 (August 1, 1955); George V. Franklin et al., A-26608 (June 23, 1953). The appellant's small tract application has been considered along with the other applications filed for the land, and it has been determined that the public interest will best be served by disposing of the land for its public use by the Girl Scouts organization, pursuant to the recreation act. Such classification of public land is within the discretionary power of the Secretary of the Interior to make. Cf. Nelson A. Gertula, 64 I.D. 225 (1957).

As to the appellant's suggestion that he be allowed to purchase the land under the public sale law, a person may file an application to have an isolated tract of land sold at public auction, but here again, the filing of the application does not confer any right in the applicant, only a right to have the application considered.

In a public sale, the only parties entitled to preference rights are adjoining owners and the land being an island there would be no adjoining owners.

The Department has consistently held that an applicant for public land who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. The appellant has not submitted any substantial or convincing evidence to show that the classification of the land for dispositon under the recreation act is in error, and in the absence of an error which appears on the face of the record, the classification will not be disturbed. Mary Refugio Jackson et al., A-27236, A-27237, (February 29, 1956); Harry E. Andersen, A-27313 (June 13, 1956).

Accordingly, the decision appealed from is affirmed.

Mr. Jack Laverne Brouard is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal, there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Kalamazoo County Council of
Girl Scouts, Inc.
c/o Stapleton, Huff, Adams & Burgie
Kalamazoo Building
Kalamazoo, Michigan

Earl J Thomas
Acting Director

Enclosure

DISTRIBUTION:

Mr. Richard M. Bauer, Attorney (Certified Mail)
Mr. Jack L. Brouard, (Regular Mail)
Kalamazoo County Council of Girl Scouts, Inc.(Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec
dismissed A-28458
7-18-60 (Sec)

DOCKET FILES

SMALL TRACTS * 2 Application

An application under the Small Tract Act must be rejected where the lands have been withdrawn for a power project.

Georgia W. Spicer, Los Angeles 0162436 (March 22, 1960)

In reply refer to:

Los Angeles 0162436
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 22, 1960

Certified Mail
Return Receipt Requested

DECISION

Georgia Wallace Spicer : Small Tract

Manager's Decision Affirmed

Mrs. Georgia Wallace Spicer has appealed from the decision of the Manager dated September 2, 1959, rejecting her application under the Small Tract Act for the reason that the lands applied for were withdrawn from entry, location, and other disposal by Power Project 564, effective September 23, 1926, under the authority of Section 24 of the Act of June 10, 1920. (16 U.S.C. 818), as amended, and have not been restored to entry.

The appellant does not challenge the correctness of the Manager's decision; her appeal in effect constitutes a request for reconsideration and issuance of the lease sought.

A review of the land status involved discloses that these lands have been and presently are within the above-stated power project. Therefore, an application for use of such land under the Small Tract Act must be rejected. Joel F. and Celia Mae Swank, A-27638 (August 7, 1958).

Accoringly, the decision of the Manager is affirmed.

Mrs. Georgia Wallace Spicer is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Georgia Wallace Spicer (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JB

69854-60

DOCKET FILES

LO (Sac)

SMALL TRACTS * 5 Renewal of Lease

An application for renewal of a small tract lease which has been classified for lease and sale will be remanded for further appropriate consideration where a decision allowed the applicant 30 days to complete his renewal application by submitting evidence of any unavoidable difficulties encountered by the applicant and of the extreme hardship, if any, that denial of renewal would cause and it appears that the applicant's response thereto was not considered by the officer who rendered the decision.

Daniel T. Deibert, Los Angeles 0120396 (March 25, 1960)

In reply refer to:
Los Angeles 0120396
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 25, 1960

Certified Mail
Return Receipt Requested

DECISION

Daniel T. Deibert : Small Tract Renewal
:
:
Case Remanded

By decision dated September 22, 1959, of the Acting Manager, Los Angeles Land Office, Mr. Daniel T. Deibert, applicant for renewal of his above-identified small tract lease, was allowed 30 days within which to complete his renewal application by submitting evidence of any unavoidable difficulties encountered by him in his efforts to comply with the terms of his lease and of the extreme hardship, if any, that denial of his application for renewal would cause.

The record shows that within the time allowed Mr. Deibert submitted a letter to the Acting Manager explaining the circumstances surrounding his efforts to comply with the lease terms. A $5.00 payment accompanied Mr. Deibert's letter and the Acting Manager assumed therefore that it was Mr. Deibert's intention to appeal from the decision referred to. Accordingly, the record was forwarded to this office for consideration.

It would appear, however, that the letter dated October 1, 1959, was supplied as the statement called for by the Acting Manager's decision, and that officer should be afforded an opportunity to consider this evidence with other available evidence relating to the entitlement of the applicant to a renewal lease. In this connection the application for renewal indicates the lessee has an incompleted building on the tract with an estimated total outlay of $1,000 plus. There is a note appended to the application form to the effect that the house would be completed within 20 days, and that the request for renewal would then be changed to an application for purchase.

For the reason stated above, the case is being remanded through the Bureau's State Supervisor, Sacramento, California, for further appropriate consideration of the application for renewal in light of the additional statement supplied by the applicant and all available data.

For the Director:

A. H.

DISTRIBUTION:

Asst. to SS (Los Angeles, California) W/case record
Mr. Daniel T. Deibert (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JJS

appeal to Sec
affirmed A-28542
9-27-61

DOCKET FILES

SMALL TRACT * 3 Classification

Public lands are properly classified as unfit for disposal under the Small Tract Act for homesite purposes where the record indicates that the establishment of buildings, and the construction of roads, streets, drainages, and other improvements would impose a heavey burden on the local government and involve this Bureau in complex planning and surveys.

Mrs. Madeline Amelia Ring et al., Los Angeles 0129823 etc. (April 25, 1960)
0139230
Fitzgerald

In reply refer to:
Los Angeles 0129823
0129873
0132609
0123688
0139230
0139233
0139234
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 25, 1960

Certified Mail
Return Receipt Requested

DECISION

Mrs. Madeline Amelia Ring :
Mrs. Hazel Hofve Smith :
Mr. Robert Sweat : Small Tract Applications
Mr. Alexander Levine :
Miss Margaret M. Fitzgerald :
Miss Helen Katherine Joyce :
Miss Wilma R. Jordan :

Decisions of the Acting Manager Affirmed

The above named applicants have appealed from decisions of the Acting Manager of May 22, 1959, which rejected their applications filed pursuant to the Small Tract Act of June 1, 1938,(43 U.S.C., 1958 ed., 682a,) for the stated reasons that the lands are dissected by live washes, are rough and broken in topography, and otherwise unsuitable for disposition under the Small Tract Act.

The record reveals that the lands are of such character that the establishment of buildings, and the construction of roads, streets, drainages, and other facilities would be extremely difficult in the development of the lands for residental purposes. In view of the circumstances, the San Bernardino County planning commissioner has advised the Bureau that the disposal of the lands for the purposes sought would not be desirable.

It is apparent from the record in these cases that development of the land for residential purposes would impose a heavy burden on the local government, involve the Bureau in complex subdivisional planning and surveys, and create innumerable administrative problems for San Bernardino County and this Bureau.

The Department has held in similar cases that public lands of this character cannot be properly classified as suitable for disposal under the Small Tract Act. See Ruth Gary, A-27789 (January 12, 1959).

The statements of the appellants that the topography of the lands would not prohibit building construction is not persuasive of the issue of the proper classification of the lands. See Mary Refugio Jackson et al., A-27236 etc. (February 29, 1960).

Therefore, the decisions of the Acting Manager are affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form -4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $35. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

Mrs. Madeline Amelia Ring (Certified Mail)
Mrs. Hazel Hofve Smith (Certified Mail)
Mr. Robert Sweat (Certified Mail)
Mr. Alexander Levine (Certified Mail)
Miss Margaret M. Fitzgerald (Certified Mail)
Miss Helen K. Joyce (Certified Mail)
Miss Wilma R. Jordan (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

71918-60

DOCKET FILES

SMALL TRACT * 5 Renewal of Lease

Application for renewal of a small tract lease is properly rejected when it is not filed within the time limits imposed by the terms of the lease and the applicable regulations.

William Karl Wittausch, Los Angeles 0136561 (April 26, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0136561
5.04g

April 26, 1960

Certified Mail
Return Receipt Requested

DECISION

William Karl Wittausch : Small Tract

Decision Affirmed

Mr. William Karl Wittausch has appealed from a decision dated October 27, 1959, which rejected his application for renewal of his small tract lease because the renewal application was not filed prior to the expiration of the lease term.

The regulations in effect at the time the appellant's lease expired provided that an application for renewal "must be filed * * * prior to the expiration of the lease." 43 CFR, 1958 Supp., 257.14. Accordingly, the Department has consistently held that an application for renewal of a small tract lease is properly rejected when it is not filed within the time limits imposed by the terms of the lease and the applicable regulations. Jimmy Deones, A-27539 (February 11, 1958); Thomas G. Myers, A-27740 (November 15, 1957); cf. Thomas P. McKeown, Mitzie Minor Beckwith, A-27993 (January 16, 1959).

It is the responsibility of the lessee to know the terms of his lease and the regulations pertaining thereto. Thomas P. McKeown, supra. As the appellant's application for renewal was concededly late, the application was properly rejected.

The decision appealed from is, accordingly, affirmed.

Mr. Wittausch is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Irwin

Enclosure

Distribution on page 2

DISTRIBUTION:

Mr. William K. Wittausch (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

71918-60

LO(Sac)

DOCKET FILES

SMALL TRACTS * 2 Applications

Where, on appeal, the record does not contain sufficient evidence to render an informed decision, a small tract application will be remanded for further consideration.

Clifford C. Robertson, Los Angeles 0126379 (April 27, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0126379
5.04g

DECISION

April 27, 1960

Clifford C. Robertson : Small Tract Application

Case Remanded

The above-named party has appealed from a decision rejecting his small tract application because the topography of the land under application is not considered suitable for small tract purposes.

Mr. Robertson has submitted with his appeal a map and photographs which tend to indicate that the tract for which he has applied, or the major portion thereof, may be suitable for small tract development.

In view of the generalized nature of the field report with respect to this land, it appears that the record does not contain sufficient information to render an informed determination with respect to this application.

It also appears that, according to the record, the tract for which the appellant has filed does not conflict with the proposed freeway to be constructed pursuant to the San Bernardino County Master Plan of Highways.

Accordingly, the case is remanded to the Manager through the Bureau's Assistant to the State Supervisor, Los Angeles, for further appropriate consideration.

For the Director:

DISTRIBUTION:

Mr. Clifford C. Robertson (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

SMALL TRACTS * 2 Applications

A small tract application is properly rejected where the topography of the land applied for renders the land unsuitable for small tract purposes.

Warren F. DePriest, Los Angeles 0126691 (May 9, 1960)

In reply refer to:
Los Angeles 0126691
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 9, 1960

Certified Mail
Return Receipt Requested

DECISION

Warren F. DePriest : Small Tract Application
:
:

Decision Affirmed

The above-named party has appealed from a decision of the Acting Manager, dated July 6, 1959, rejecting his small tract application for the reason that the topography of the land applied for renders the land unsuitable for small tract purposes.

The land for which Mr. DePriest filed his application is described therein as the E$\frac{1}{2}$SW$\frac{1}{4}$NW$\frac{1}{4}$SW$\frac{1}{4}$ sec. 10, T. 3 N., R. 4 E., S.B.M. He does not attempt to controvert the adverse classification of this land, but claims instead that, according to his own records, the land he applied for is the E$\frac{1}{2}$NE$\frac{1}{4}$SW$\frac{1}{4}$SW$\frac{1}{4}$ sec. 11, T. 3 N., R. 4 E., S.B.M.

In the absence of a showing that the classification of the land described in the appellant's application is erroneous, the decision appealed from must be affirmed. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1959).

The appellant may, of course, file a new application for the land he apparently intended to acquire in the first instance, if this land is open to such filing. He will, however, acquire no preference right thereto by virtue of this erroneously filed application. Annie Davis, 34 L.D. 539 (1906).

Accordingly, the decision of the Acting Manager is affirmed.

Mr. DePriest is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Warren F. DePriest (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

SMALL TRACTS * 2 Application

MINING CLAIMS * 1 Generally

A small tract application is properly rejected where the land applied for is embraced in mining claims which appear to be valid.

Jim W. Griepsma. Sacramento 053276 (May 10, 1960)

L. O.
Sac

In reply refer to:

Sacramento 053276
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 10, 1960

Certified Mail
Return Receipt Requested

DECISION

Jim W. Griepsma	:	Small Tract Application
	:	
	:	

Decision Affirmed

Mr. Jim W. Griepsma has appealed from a decision of the Manager, Sacramento Land Office, dated November 19, 1959, rejecting his above identified small tract application for the reason that the land applied for has been classified as mineral in character, being valuable for gold, and has been appropriated under the United States mining laws, mining claims having been located on the land.

The records verify that the land applied for, described as the N½SW¼NW¼SW¼ Sec. 17, T. 31 N., R. 5 W., M. D. M., California, is embraced, along with other lands, in the Yankee Jack group of quartz mining claims, which were located prior to the filing of the small tract application and which appear to be valid.

The appellant merely states in his appeal that he is not interested in the gold or minerals in the land, but wants the land for a small farm or homesite.

The Department has held that land embraced in ostensibly valid mining claims is not subject to disposition under the small tract act, and it is proper to reject small tract applications for such lands. Cf. J. W. Allen et al., v. E. A. Mohler et al., A-26931 (November 5, 1954).

Accordingly, the decision of the Manager is affirmed.

Mr. Jim W. Griepsma is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dunn

Enclosure

DISTRIBUTION:
Mr. Jim W. Griepsma (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

DOCKET FILES

SMALL TRACT * 5 Renewal of Lease
* 6 Sales

An application to renew a small tract lease must be filed before the lease has expired.

An application to purchase a small tract in Alaska is properly rejected for the reason the improvements are not satisfactory for residence purposes where they consist of a building which does not have insulation or interior walls, and there are no garbage facilities nor adequate sanitary facilities.

Alan Francis Greer, Anchorage 035881 (May 12, 1960)

L.O.
Sac

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Anchorage 035881
5.04g

May 12, 1960

Certified Mail
Return Receipt Requested

DECISION

Alan Francis Greer	:	Small Tract

Decision Affirmed

Mr. Alan Francis Greer has appealed from the decision dated January 15, 1960, of the Chief, Lands Adjudication Unit, which rejected his application to purchase lands leased to him under the Small Tract Act, for the reason that the improvements constructed thereon do not meet the requirements for purchase of the tract as a residence site.

Contrary to Mr. Greer's assertion on appeal that the purchase application was rejected because it was filed three weeks after the expiration of the lease, the basis for rejection was that the improvements, required by the option in the lease authorizing purchase, did not meet the requirements of purchase for residence purposes. This decision was based on findings in a report of a field examination which indicated that the improvements consisted of a wood frame cabin walled by Flint Kote siding, with no interior wall, no insulation, no garbage facilities and unsatisfactory sanitary facilities. Appellant does not refute these findings nor contend that they are erroneous, he merely indicates that he did not know the building had to be insulated. As the land is located in a part of Alaska having cool summers and severe winters and the building was to be used for residence purposes, it would seem as a practical matter that insulation would be necessary in order for the building to be habitable. There is no explanation as to the lack of adequate sanitary and garbage facilities. Therefore, as the improvements were not suitable for residence purposes, the application to purchase was properly rejected. 1/ Leroy L. Scott, A-27317 (July 13, 1956); Cf. Joseph M. Czaplinski, A-27492 (November 15, 1957).

1/ The record does not show that appellant furnished the photographs of the improvements required by 43 CFR 257.13(b). Therefore, the application could have been summarily rejected on that ground.

Mr. Greer has made a request on appeal that he be granted an extension of time to complete the necessary requirements. He offers several explanations as to why he failed to apply for an extension of time at an earlier date. However, they do not afford an excuse for his failure to do so. The lease provided that the lessee "may apply for renewal of the lease, at any time prior to the expiration thereof." /Emphasis added./ Also, the regulation governing renewal of this small tract lease states mandatorily that the application to renew "must be filed * * * prior to the expiration of the lease". 43 CFR, 1958 Supp., 257.15. As the lease expired by its terms on August 31, 1959, and as the application to purchase was filed 23 days after that time, it cannot be treated as an application to renew the lease in view of the aforestated regulation. Cf. Zanna M. Osgood, A-27980 (August 3, 1959).

After this decision becomes final, the Manager will allow Mr. Greer 90 days after notice thereof within which he can remove the improvements or otherwise, in accordance with 43 CFR 257.19(c), they will become the property of the United States.

The decision appealed from is affirmed.

Alan Francis Greer is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dunn

Enclosure

DISTRIBUTION:

Alan Francis Greer (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JB

DOCKET FILES

SMALL TRACTS * 2 Applications

STATE GRANTS AND SELECTIONS * 2 School Lands

Where the State has been diligent in filing an application for an indemnity school selection, its application will be preferred over any private applications filed for the same land, even though the State's application is filed subsequent to the private applications.

Paul E. Copas et al., State of California, Los Angeles 0123057 etc.
(June 14, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0123057
0123555
5.04g

June 14, 1960

Certified Mail
Return Receipt Requested

DECISION

Paul E. Copas :
Moses Matook :
: Small Tract Applications

Decision Affirmed

Messrs. Paul E. Copas and Moses Matook have appealed from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated October 8, 1959, rejecting their above-identified small tract applications, for the reason the land applied for has been classified as suitable for disposal pursuant to the State of California's application to select indemnity school land under the Act of February 12, 1891 (43 U.S.C., 1958 ed., sec. 851).

The small tract applications are part of a group of some 142 applications filed under the Small Tract Act, as amended (43 U.S.C. sec. 682a). The appellants' applications were filed on December 14, 1954, and December 29, 1954, respectively. The State's application was filed on January 12, 1955.

The appellants contend in substance that the land has been found unsuitable for agricultural development, and generally is suitable for homesite purposes. One of the appellants contends that there are reports of attempts by speculators to "grab" the land in question away from the small tract applicants, and that if the State acquires the land, it can dispose of the land to such speculators. The same appellant claims that he cannot see why the State wants to trade land which it has already filed on (presumably referring to the base land used by the State for its selection) or why the State should be given a preference of three months over private applicants. This appellant also asserts that he is a veteran and should be put on equal terms with the State.

The Indemnity Act of February 28, 1891, _supra_, under which the State filed its application in the instant case, provides _inter alia_, that the State may select land to compensate for deficiencies in sections 16 and 36 in each township, which were granted to it for school purposes when it was admitted to the Union. In other words, if the State did not get all of the land in each section 16 or 36, it could select other public land in the exact amount in lieu thereof. Under the established policy of the Department, which is based on the fact that Congress has obligated the United States to fulfill such statutory land grants to the states, where State selections conflict with an attempt by a private person to obtain the same land, the selection of the State shall ordinarily take precedence, even though the land may also be suitable for disposition pursuant to the private application. Cf. State of California, Joseph L. Freeman, Sr., A-26255 (July 25, 1952); State of California, A-26777 (June 1, 1954). However, to merit preferential consideration the State must file its application within a reasonable time after the filing of the competing application. Cf. Christian Fuscher, Washington 01348 (December 17, 1957). In the Fuscher case, which was cited in the decision appealed from, it was held that the State was diligent in filing its application since it was filed within three months after the conflicting application. It was not meant by this that the State was given a three months preference over the conflicting application as intimated by one of the appellants, but that in view of the fact that the State's application had been filed within three months after the conflicting application, it merited preferential consideration. In the instant cases, the State filed its application only 30 days after the earliest one of the conflicting applications had been filed. Accordingly, the State's application, being diligently filed, merits preferential consideration over the private applications of the appellants. Cf. State of California, Joseph L. Freeman, Sr., supra; State of California, supra. See also Nelson A. Gerttula, 64 I.D. 225 (1957).

With respect to the contention of one of the appellants that the State can dispose of the land to speculators once it has obtained title thereto, this Department at the present time has no reason to inquire into or question the use to which the State will put the selected land. Cf. Isabell Gunnerson et al., State of Nevada, A-26952 (February 11, 1955), and cases cited therein.

Accordingly, the decision appealed from is affirmed.

Messrs. Paul E. Copas and Moses Matook are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If appeals are taken, the amount of the filing fee will be $5.00 for each person appealing. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

State of California
State Lands Division
1403 - 12th Street
Sacramento 14, California

For the Director:

Enclosure

DISTRIBUTION:

Mr. Paul E. Copas (Certified Mail)
Mr. Moses Matook (Certified Mail)
State of California (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

DOCKET FILES

SMALL TRACTS * 5 Renewals

Applications for renewals of small tract leases are properly rejected where there is no satisfactory showing that the lessees' failure to apply for the purchase of the tracts is justified under the circumstances and that nonrenewal of the leases would work an extreme hardship upon them.

John F. Webb et al., Los Angeles 0123697, etc. (June 21, 1960)

RECEIVED
JUL 5 1960
Dept. of the Interior
BUR. OF LAND MGMT.
STATE OFFICE
Sacramento
Calif.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0123697
0145579
0123564
5.04g

June 21, 1960

Certified Mail
Return Receipt Requested

DECISION

John F. Webb :
Fernand Nataf : Small Tracts
Frank R. Feigen :

Decisions Affirmed

Messrs. John R. Webb, Fernand Nataf, and Frank R. Feigen have appealed from separate decisions of the Chief, Land Adjudication Unit, dated February 15 and 25, 1960, rejecting renewal applications for their respective small tract leases, for the stated reasons that each lessee had failed to comply with the regulation 43 CFR 257.15(c), which provides in pertinent part that before a lease can be renewed there must be a satisfactory showing:

> "that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee."

Each small tract lease involved was classified for lease and sale and contained an option to purchase the tract if the lessee paid the appraised price and constructed the required improvements. None of the appellants has constructed any improvements upon the leased lands. They contend in substance that it was financially difficult for them to meet the requirements for purchase. The various reasons offered are sickness in the family, expense of schooling, expenses involved in getting married, and failure to remember that the lease was going to expire so soon. However, these reasons alone do not justify a failure to construct the required improvements. Mere financial hardship or inconvenience is not enough. Louis E. Levitan, Los Angeles 0112233 (April 15, 1959).

Concerning the expenditures in filing fees and rental, these expenses are necessary for all small tract lessees who, in turn, have the benefit of the leased land for a term of years with the option to purchase if the lands have been classified for lease and sales. Such expenditures and the frustration of the appellants' plans to use the lands in the future cannot be considered extreme hardship within the meaning of the regulation and the provision in their leases to the same effect. Ira A. Kleiner, A-27969 (August 4, 1959). As no money was expended in developing the tracts, it does not appear that denial of the lease renewals would result in hardship to the appellants from the loss of any tangible investment. See Jimmie Deones, A-27539 (February 11, 1958).

In view of the fact that the appellants did not show that their failure to apply for purchase of the tracts is justified under the circumstances and that nonrenewal of the leases would work an extreme hardship upon each of them, the decisions are affirmed.

Messrs. John F. Webb, Fernand Nataf, and Frank R. Feigen are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each renewal application included in the appeal. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

John F. Webb (Certified Mail)
Fernand D. Nataf (Certified Mail)
Frank R. Feigen (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JB

SMALL TRACTS * 2 Applications

It is proper to reject a small tract application filed for lands withdrawn for the purpose of protecting the watersheds supplying water to the City of Los Angeles and other cities and towns in the State of California by the act of March 4, 1931.

Alexander G. Bodenstein et al., Sacramento 060199, etc. (June 29, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Sacramento 060199
060695
5.04g

June 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Alexander G. Bodenstein and : Small Tracts
Harry K. Burnett :

Decision Affirmed

The above named parties have appealed from a decision of the Manager, dated March 28, 1960, which rejected their small tract applications for the reason that the lands applied for have been withdrawn for the protection of the watershed supplying water to the City of Los Angeles.

The act of March 4, 1931 (46 Stat. 1530), provides that the lands in question are:

> "* * * withdrawn from settlement, location, filing, entry or disposal under the land laws of the United States for the purpose of protecting the watersheds now or hereafter supplying water to the City of Los Angeles and other cities and towns in the State of California, * * *".

Our records show that this withdrawal has not been revoked. The Department has consistently held that a small tract application for withdrawn public lands must be rejected and that the applications will not be held in a suspended status to await the possible lifting of the withdrawal. James W. Hammond, A-24634 (July 7, 1947), and cases cited therein.

Therefore the appellant's applications were properly rejected and the decision of the Manager is affirmed.

Alexander G. Bodenstein and Harry K. Burnett are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each appellant. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Irwin

Enclosure

DISTRIBUTION:

Mr. Alexander G. Bodenstein (Certified Mail)
Mr. Harry K. Burnett (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

75105-60

SMALL TRACTS * 5 Renewals

VETERANS * 3 Soldiers' and Sailors' Civil Relief Act

An application for renewal of a small tract lease is properly rejected where no showing is made that the lessee's failure to apply for the purchase of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship upon him.

Benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, do not apply to renewal of a small tract lease by a serviceman who was in military service at the time the lease offer was filed.

James E. Jenkins, Los Angeles 0132672 (June 29, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0132672
5.04g

June 29, 1960

Certified Mail
Return Receipt Requested

DECISION

James E. Jenkins : Small Tract

Decision Affirmed

Commander James E. Jenkins has appealed from a decision dated February 26, 1960, of the Chief, Land Adjudication Unit, which rejected his application to renew his small tract lease for the reason that the showing required by regulation 43 CFR 257.15(c) was not made. That regulation provides as follows:

> "Where the land has been classified for lease and sale, renewals will be approved only upon a satisfactory showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee." 43 CFR 257.15(c).

The small tract lease of a tract of land classified for lease and sale, was issued to Mr. Jenkins effective May 1, 1957, for a term of three years, and contained an option whereby the lands could be purchased if substantial improvements appropriate for the use for which the lease issued were constructed.

Mr. Jenkins asserts on appeal that when he applied for the lease, in May 1955, he was prepared to comply with the construction requirements for purchase. But at the time the lease was issued he had been transferred overseas in connection with his military duties and since that time has been stationed overseas or on the East coast, and thus has been unable to plan and supervise construction of the necessary improvements. He contends that he thus has been deprived of equal opportunity to comply with the requirements, that renewal is justified in his case because of these circumstances, and, in effect, requests an interpretation of the law eliminating for military personnel in his circumstances the requirement that the lessee show nonrenewal would work an extreme hardship on him. He does not contend that rejection of a prior request to the Manager for relief under the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, was erroneous, but he reiterates his request for benefits thereunder.

Appellant had been in the military service many years prior to the filing of his small tract lease application. Therefore, the benefits of the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, are not applicable to him. The Act was intended to protect persons who had rights and obligations with respect to the public domain initiated prior to their entering military service and who could not fulfill the obligations because of their service duties. However, the Act was not intended to apply to military personnel who acquire rights and obligations in the public domain after their entry in the service. See Russell L. Coe, A-27527 (January 24, 1958). Therefore, benefits which clearly were not granted to appellant by this law cannot be given him in direct contravention of the law and the regulations.

The terms of appellant's lease, as well as the regulations, expressly state that the lessee must show that nonrenewal would work an extreme hardship on him before renewal can be granted. The appellant has not shown that he has expended any money in an effort to comply with the requirements for purchase. Further, the Department has held that military transfer is no justifiable excuse for failure to meet the obligations a lessee has undertaken in order to obtain the land. Russell L. Coe, supra. In the circumstances it cannot be concluded that the lessee has shown that his failure to apply for the purchase of the tract is justified and that nonrenewal of the lease would work an extreme hardship upon him. The renewal application was properly rejected, and the decision is affirmed. Cf. Ira A. Kleiner, A-27969 (August 4, 1959).

James E. Jenkins is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Ford,

Enclosure

DISTRIBUTION:

James E. Jenkins (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JB

75105-60

appeal to Sec
affirmed A-28650
5-17-62

DOCKET FILES

SMALL TRACTS * 1 Generally

RULES OF PRACTICE * 9 Service on Adverse Party

Where appellants in connection with small tract applications fail to furnish proof of service of copies of notices of appeal upon the adverse claimants who are desert land applicants, the appellants lose whatever rights they may have had by the filing of their small tract applications, even though the Bureau decides in favor of disposing of the land under the small tract law as against disposing of the land under the desert land law.

Leonard C. Brose et al., Los Angeles 0122197, etc. (August 1, 1960)

In reply refer to:

Los Angeles 0122197, etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 1, 1960

Certified Mail
Return Receipt Requested

DECISION

Leonard C. Brose et al. 1/	:	Small Tract Applications

Decision Affirmed
Appeals Dismissed

Mr. Leonard C. Brose and five other small tract applicants have appealed from a decision of the Manager dated May 7, 1959, which allowed them 30 days within which to furnish proof that they had served copies of their appeals on the adverse parties named in previous decisions of the Manager dated March 13, and March 27, 1958, from which they had appealed.

The appellants in the present appeals are part of a group of small tract applicants whose applications included land which had also been applied for in three desert land applications filed by Frances J. Clark, Willie Elmo Mathews, and Herman Blackman, Los Angeles 094860, 098510, and 0106162, respectively. The small tract applications were rejected by the Manager's decisions of March 13 and 27, 1958, for the reason that the lands had been classified as being suitable for desert land entry. The small tract applicants thereupon appealed from these decisions to the Director of the Bureau of Land Management.

The Director in a decision of July 24, 1958, reversed the decisions appealed from, and provided therein that all of the small tract applications be allowed, but on condition that the applicants first submit proof that they had served copies of the notices of their appeals on the adverse parties, the desert land applicants. The Director's decision listed all of the persons on "Appendix B", which was made part thereof, who had not furnished proof of service of copies of notices of their appeals from the decisions of March 13, and March 27, 1958, as required by the applicable regulations, 43 CFR 1958 Supp. 221.95. The appellants in the instant cases are part of that group.

1/ The names of the appellants and the serial numbers of their cases are listed on the attached Appendix "A".

The appellants do not dispute the fact that they are required to file copies of their notices of appeal on the adverse parties named in the decisions appealed from. The appellants, instead, contend in substance that since it has been determined that the lands applied for are suitable for small tract development, and as they have complied with all of the requirements of the regulations as to filing their applications, their applications should be allowed. These contentions, however, are without merit.

The regulations 43 CFR 221.95 pertaining to the service of copies of notices of appeals on adverse parties provides in pertinent part that:

> "(b) In any case service may be proved by an acknowledgement of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered to such person at his record address * * *."

By letters dated January 27, 1959, each of the appellants concerned was again advised by the Chief, Lands Adjudication Unit, of the provisions of the Director's decision of July 24, 1958, and they were requested to furnish the proof of service as required. None of the appellants responded to the request made in these letters. However, in their appeals from the Manager's decision of May 7, 1959, each of the appellants, Leonard C. Brose, Leonard V. Thompson, Robert L. Thompson, Lorence D. Dodson, and Ralph Francis Stewart, Los Angeles 0122197, 0122446, 0122447, 0122448, and 0122252, respectively, furnished a certified mail return receipt card showing receipt of a certified article by Mr. Willie Elmo Mathews, the adverse party concerned in these cases. The dates of receipt of the articles by the adverse party are shown to be in May 1959 on the return receipt cards, and are obviously for the receipt of the copies of the notices of appeal served on the adverse party in connection with the present appeals from the Manager's decision of May 7, 1959. This proof of service does not meet the requirements of the regulations and the stipulations in the Bureau decision of July 24, 1958, with respect to the first appeals filed in connection with the Manager's decisions of March 13 and 27, 1958. The appellant Bert L. Pettingill, Los Angeles 0124193, states that he mailed a copy of his first notice of appeal from the Manager's decision of March 27, 1958, to the adverse party by ordinary mail because the post office was closed when the notice was mailed. This appellant asserts that he can furnish an affidavit to the effect that a copy of his notice of appeal was mailed to the adverse party in connection with his first appeal. This, also, would not meet the requirements of the regulations as to proof of service.

It appears that none of the appellants herein named have furnished proper proof of having served copies of their notices of appeal from the respective decisions of the Manager dated March 13, and March 27, 1958, on the adverse parties named therein in conformity with the applicable regulations, and as stipulated in the Director's decision of July 24, 1958. Accordingly, their appeals are hereby summarily dismissed. Cf. E. O. Bishop et al., 64 I.D. 25 (1957); Merriam T. George, A-37852 (January 29, 1959). Moreover, since the appellants have failed to comply with the conditions imposed by the Bureau's decisions as to submitting the required proof of service, they have lost all rights they may have had under their small tract applications, and the applications are considered to be finally rejected in their entireties.

The decision of the Manager is affirmed on that basis.

Each of the appellants listed on Appendix "A" of this decision is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5.00 for each person filing an appeal. In taking an appeal there must be strict compliance with the regulations.

For the Director:

R J McCormick

Enclosure

DISTRIBUTION:

Each appellant shown on Appendix "A" (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

78567-60

APPENDIX "A"

Name	Los Angeles Serial Number
Mr. Leonard C. Brose 915 Ford Street Burbank, California	0122197
Mr. Ralph Francis Stewart 915 Ford Street Burbank, California	0122252
Mr. Leonard V. Thompson 12931 Hamlin Street North Hollywood, California	0122446
Mr. Robert L. Thompson 7243 N. Farmdale Avenue North Hollywood, California	0122447
Mr. Lorence D. Dodson 12329 Burton Street North Hollywood, California	0122448
Mr. Bert L. Pettengill 409 G Street P. O. Box 385 Eureka, California	0124193

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL
SEP 6 3 03 PM 196
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

SMALL TRACTS * 2 Applications

A small tract application for land that has been patented is properly rejected as such land is no longer under the administrative jurisdiction of the United States or subject to disposition under the Small Tract Act.

Helen E. Ruttan Church, Los Angeles 0163405 (August 11, 1960)

In reply refer to:

Los Angeles 0163405
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 11, 1960

Certified Mail
Return Receipt Requested

DECISION

Helen E. Ruttan Church : Small Tract Application

Decision Affirmed

Mrs. Helen E. Ruttan Church has appealed from a decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated April 13, 1960, rejecting her above-identified application filed under the Small Tract Act for the stated reason the land applied for is patented land and no longer under the administrative jurisdiction of the United States and consequently not subject to disposition under the Small Tract Act.

The records show that the land applied for by the appellant was included in patent No. 1199894, issued to Thornburg Engineering, Incorporated, on October 1, 1959, pursuant to a public sale under serial number Los Angeles 0145675. This sale was had under authority of Revised Statutes 2455, as amended (43 U.S.C. sec. 1171) and pertinent regulations thereunder (43 CFR Part 250). This patent embraces the E½SW¼ sec. 20, T. 10 S., R. 1 W., S.B.M., which includes the tract applied for by the appellant.

The appellant states she believed the lands were public lands of the United States because she purchased an option to buy them as Government lands from an individual who represented that a portion of the moneys she paid would go to the Government.

Once the United States has divested itself of title to public land, the administrative jurisdiction of the United States over the land ceases, and it is no longer subject to disposition under the public land laws. Cf. Newton's Fork Gold Mining Co., A-27109 (April 27, 1955). It was proper, therefore, to reject the appellant's application in the instant case, and the decision appealed from is affirmed.

When this decision has become final, any moneys that the appellant has paid to the Bureau in connection with the instant application and which are refundable under the applicable law and regulations will be returned to her in due course.

Mrs. Helen E. Ruttan Church is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mrs. Helen E. Ruttan Church (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

5T

DEPT. OF INTERIOR
SACRAMENTO, CAL.
SEP 6 3 04 PM 1960

DOCKET FILES

RULES OF PRACTICE * 10 Standing to Appeal

Where an appeal was filed by a purported attorney without a showing that he was formally admitted to practice before the Department, or admitted to practice before the courts of any State, Territory, or the District of Columbia, or that he is appealing on behalf of a member of his family, it is proper to dismiss such an appeal on that ground alone.

Evelyn E. Wardle, Los Angeles 0143622 (August 17, 1960)

In reply refer to:

Los Angeles 0143622
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 17, 1960

Certified Mail
Return Receipt Requested

DECISION

Evelyn E. Wardle	:	Small Tract Application

Appeal Dismissed

An appeal has been filed on behalf of Mrs. Evelyn E. Wardle from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated March 30, 1960, rejecting Mrs. Wardle's above-identified application filed under the Small Tract Act, as amended, for the stated reason that the land applied for is isolated public domain, which does not have public access.

A careful review of the record in the instant case discloses that the appellant did not sign the notice of the appeal herself, but that it was signed by Christy Justice as "initiator". The record does not show that Christy Justice is an attorney formally admitted to practice before the Department, or admitted to practice before the courts of any State, Territory, or the District of Columbia, or that such person was appealing on behalf of the appellant as a member of the family. Therefore, Christy Justice has no standing to appeal in this case. It has been held in similar cases that it is proper to dismiss an appeal on that ground alone. Cf. Charles Hover Stevens et al., A-27301 (May 4, 1956).

Accordingly, the appeal is summarily dismissed.

When this decision becomes final the case record will be remanded to the Manager, through the Bureau's office of Assistant to the State Supervisor in Los Angeles in order that any money due the appellant may be refunded, and in order that the case can be closed on the records of the Los Angeles Land Office.

Mrs. Evelyn E. Wardle is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mrs. Evelyn E. Wardle (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

DOCKET FILES

SMALL TRACTS * 2 Applications

RULES OF PRACTICE * 11 Statements of Reasons

Appeals will be dismissed summarily where the appellants fail to submit statements of reasons, where the appellants file the statements of reasons too late, or where the appellants fail to point out wherein the decisions appealed from are in error.

William J. Nelson et al., Los Angeles 0154170 etc. (August 17, 1960)

DEPT. OF INTERIOR
SACRAMENTO, CAL.
SEP 6 3 04 PM 1960
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:

Los Angeles 0154170 etc. 1/
0156573 etc. 2/
0154447 etc. 3/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 17, 1960

Certified Mail
Return Receipt Requested

DECISION

William J. Nelson et al. 1/ :
Floyd Harold Pitts et al. 2/ : Small Tract Application
James Floyd Vivian et al. 3/ :

Appeals Dismissed

Mr. William J. Nelson and 27 others have appealed from decisions of various dates of the Manager, Los Angeles Land Office, rejecting their small tract applications for lands located in Imperial County, California, for the reason it has been determined that the lands applied for should not be classified for small tract purposes until such time as officials of Imperial County obtain land use and zoning ordinances, in order that such classification may be coordinated with the provisions of such ordinances and in accordance with other recommendations that might be made by the Imperial County Planning Commission.

Appendix "A"

Mr. William J. Nelson and others listed in Appendix "A" have failed to submit statements of reasons in support of their appeals.

Appendix "B"

Mr. Floyd Harold Pitts and others listed in Appendix "B" have filed statements of reasons in support of their appeals, but they were not filed in or transmitted to this office before the expiration of the period allowed by the regulation, 43 CFR, 1958 Supp., 221.3, and the delay in the filing of the statements cannot be waived as provided for by 43 CFR, 1958 Supp., 221.92(b).

1/ See Appendix "A"
2/ See Appendix "B"
3/ See Appendix "C"

Appendix "C"

Mr. James Floyd Vivian and others listed on Appendix "C" have failed to point out in their appeals wherein the decisions appealed from are believed to be in error and consequently they have failed to state a reason for the appeal, as required by the Rules of Practice. Cf. *Duncan Miller*, 65 I.D. 292 (1958).

As each of the appellants listed in the Appendices either did not file a statement of reasons, filed a statement of reasons but filed it too late, or filed a purported statement of reasons which was insufficient to be acceptable as such, all of the appeals are governed by 43 CFR 221.98 of the regulations which provides that if the statement of reasons is not filed within the time required, the appeal will be subject to summary dismissal.

Therefore, all of the appeals of the applicants listed in the attached appendices "A", "B", and "C" are hereby summarily dismissed.

Each applicant listed on the attached appendices is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for *each* application involved. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Each Appellant list in Appendices "A", "B", and "C" (Certified Mail)
Plotkin, Cassman & Delk, Attorneys at Law (Certified Mail)
Hon. Edgar W. Hiestand, House of Representatives (Regular Mail)
Hon. D. S. Saund, United States Senate (Regular Mail)
Hon. J. Arthur Younger, House of Representatives (Regular Mail)
Hon. Gordon L. McDonough, House of Representatives (Regular Mail)
Hon. Clyde Doyle, House of Representatives (Regular Mail)
Hon. George A. Kasem, House of Representatives (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

APPENDIX "A"

Name of Applicant	Serial Number
	Los Angeles
William J. Nelson 264 East Hemlock Oxnard, California	0154170
Richard Allen Eddy 1320 Lorain Road San Marino, California	0154171
Kenneth A. Bryant 4745 Kraft Avenue North Hollywood, California	0154172
Camille E. Stanley 2601 Christmas Tree Lane Bakersfield, California	0154173
Mathew P. Holland 8811 Pacific Coast Highway Laguna Beach, California	0154196
William Dan Huddleston Route 1, Box 52 Brawley, California	0154213
Herman Otor Elms Route 1, Box 77 Brawley, California	0154214
Arthur Ben Huddleston 1504 Cheyenne Road Colorado Springs, Colorado	0154442
Allene Amy Elms Route 1, Box 77 Brawley, California	0154500
Russell R. Pratt 601 Gayley Los Angeles, California	0154679

Appendix "A" (Cont'd)

Name of Applicant	Serial Number
	Los Angeles
Westal Carl Burfield Box 957 Brawley, California	0155030
Mrs. Naomi May Shackelford 322 W. Alamo Calipatria, California	0155181
Larance Russell Braley P. O. Box 12 Imperial, California	0155182
Emma Borjeson McKendry 321 W. Alamo Calipatria, California	0155183
John L. Shaitel 122 West Franklin Sparta, California	0156321
Anita Margaret Hovey 305 Hermosa Way Menlo Park, California	0157514

APPENDIX "B"

Floyd Harold Pitts 120 W. California Street Calipatria, California	0156573
Elsie Gloria Pitts 120 W. California Street Calipatria, California	0156574
Armand Vincent Wright 12763 Chandler Blvd. North Hollywood, California	0156906

Appendix "B" (Cont'd)

Name of Applicant	Serial Number
	Los Angeles
Rosemary Hanson Toller 11469 Potter Norwalk, California	0156351
Pauline Bertha Kozenko 14522 Horst Avenue Norwalk, California	0156352
Carol Ann Huddleston 1200 Terrazo Whittier, California	0156356
Julia Audrey Konkoly 14522 Horst Avenue Norwalk, California	0156738
Joseph Charles Costa 12763 Chandler Blvd. North Hollywood, California	0156851

APPENDIX "C"

James Floyd Vivian 170 Terraco Redlands, California	0154447
Janet Marie Aaberg 4610 Royal Oak Road Santa Maria, California	0154448
Fannie Ann Gasman 1431 W. 37th Place Los Angeles 18, California	0155752
Roselyn Marcella Thacker 12574 Indianapolis Street Los Angeles 66, California	0157296

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DEPT. OF INTERIOR
SACRAMENTO, CAL.

SEP 6 3 04 PM 1960

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

SMALL TRACTS * 2 Applications

A small tract application is properly rejected where the land applied for is embraced in an allowed small tract application and final certificate has been issued for the land.

An applicant gains no preference right to enter a second tract of land by virtue of a previously rejected small tract application.

Arthur Corden, Sacramento 058537 (August 22, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 058537
5.04g

August 22, 1960

Certified Mail
Return Receipt Requested

DECISION

Arthur Corden : Small Tract

Decision Affirmed

Mr. Arthur Corden has appealed from a decision of the Manager, dated November 16, 1959, rejecting his small tract application for the reason that Final Certificate for the land had been issued to a prior applicant.

The appellant filed his small tract application for the W½SW¼SW¼NW¼NW¼ section 12, T. 27 S., R. 32 E., M.D.M., on July 22, 1959. This 1¼ acre tract is, however, a portion of a five acre tract, the S½SW¼NW¼NW¼ section 12, embraced in the small tract application of Mr. Merrill G. Sampson, Sacramento 053932, which was filed on October 22, 1958. The five acre tract was classified for direct sale by Classification Order No. 574 on July 23, 1959, pursuant to this application; Final Certificate for the tract was issued November 6, 1959, and the tract was patented to Mr. Sampson on November 16, 1959.

No proof of service of notice of appeal and the related appellate documents on the adverse party named in the Manager's decision has been submitted by the appellant. He has, however, asserted that this is unnecessary as he concedes that the issuance of a Final Certificate to the prior applicant, Mr. Sampson, cannot be successfully contested, and requests only that he be given a chance to amend his application and that he be granted a lease on 1¼ acres of similar land in the same section, section 12.

In view of the appellant's concessions and in the absence of any error on the face of the record indicating the action of the Manager was improper, the decision appealed from must be, and is hereby, affirmed. Cf. Roy A. Davis, A-27359 (August 15, 1956).

The appellant may file an amended application for any vacant, unreserved public land in section 12 or elsewhere. However, if the land has not been classified for small tract development no lease will be issued or sale authorized prior to classification of the land for such purposes. 43 CFR 1959 Supp., 257.3(a). Further, the appellant has gained no preference right to the tract he may select by virtue of his rejected application. A small tract application, being an application to enter, is addressed to a specific tract of land, and to amend it to describe other land is, in effect, to make a new application. Annie Davis, 34 L.D. 539 (1906).

There is nothing of record to indicate that Mr. E. C. Roarty, who appears to be prosecuting the appeal on behalf of Mr. Corden, is qualified to practice before the Department. See 43 CFR 1.3. Mr. Corden is notified that further reliance upon Mr. Roarty in this respect may result in action prejudicial to his interests.

Mr. Corden is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Arthur Cordon (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

SMALL TRACT * 6 Sales

DOCKET FILES

An application to purchase without improvements the land embraced in a lessee's small tract lease is properly rejected where a group agreement of the nature contemplated by the regulations has not been submitted. Agreements of this type are initiated by the lessees and approved by the Bureau only as to their legality in the event the Bureau, in its discretion, determines they are appropriate in lieu of the construction of improvements.

Vincent I. Long, Los Angeles 0114460 (August 29, 1960)

In reply refer to:

Los Angeles 0114460
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Vincent I. Long : Small Tract

Decision Affirmed

Mr. Vincent I. Long has appealed from a decision of the Chief, Land Adjudication Unit, dated December 30, 1959, which rejected his application to purchase without improvements the land embraced in his small tract lease for the reason that an agreement or contract as contemplated by the regulations (43 CFR 1959 Supp., 257.13(d)) was not furnished by the appellant.

The appellant's lease was issued on February 1, 1958, for a term of three years, with the option to purchase the land after the expiration of one year if the lessee had fully complied with the terms and conditions of the lease. The lessee's application to purchase was filed on May 14, 1959.

The purchase application contained a statement that all terms and conditions of the lease and the regulations under which it was issued had been complied with "except that no improvements have been made, substituting therefor a set of restrictions filed with the Bureau of Land Management, copy of which is enclosed herewith." The "set of restrictions" was an unsigned paper upon which were listed the nature of the improvements to be constructed on the land. These restrictions had apparently been utilized by lessees of land in the vicinity as a basis for entering group agreements prescribed by the regulation cited above.

On appeal the lessee has filed the same "set of restrictions" previously filed, adding thereto the headnote "A BINDING AGREEMENT BETWEEN BUREAU OF LAND MANAGEMENT, THE LESSEES OF 13 tracts in the SW$\frac{1}{4}$ of SEC. 22, * * *and the UNDERSIGNED," and a statement to the effect that he accepts, as a binding agreement, the set of restrictions as applied to the land embraced in his own lease. This document was, however, signed only by the lessee. In submitting this document the lessee stated he was following the same routine approved by the Bureau in the past, specifically referring to the issuance of patent to 13 small tract lessees in the neighboring quarter section.

The pertinent regulation reads as follows:

> "(d)(1) Groups of lessees of small tracts in an area may enter into binding agreements among themselves to observe, in the development of their leased tracts, standards of building, sanitation, and health requirements consistent with the terms of their leases. Lessees who participate in this agreement may exercise, at the discretion of the Bureau of Land Management, their option to purchase without prior compliance with the improvement requirements of their leases." 43 CFR, 1959 Supp., 257.13(d).

A lessee, in order to benefit from the provisions of this regulation, must be mutually bound with the other lessees in the area to observe the standards agreed upon. This agreement must be in writing and must be signed by all of the lessees who wish to become parties to the agreement. The Bureau of Land Management is not a party to these agreements. They are initiated solely by the lessees and are approved by the Bureau only as to their legality in the event the Bureau, in its discretion, determines thatthis course of action is appropriate. Any person desiring to become a party to one of these agreements, after it has been approved and executed, must obtain the approval of each of the original participants, as the agreement is binding among and between each of the parties.

In view of the regulation it is obvious that the appellant has not submitted an agreement of the nature contemplated by the regulations and the purchase application was properly rejected.

Furthermore, since the acceptance of group agreements is discretionary and since the agreements generally have not proved to serve any useful purpose but do, in fact, encourage speculation in small tracts, the Bureau has concluded, as a matter of policy, no longer to accept such agreements as a basis for the issuance of a patent.

Therefore, the decision appealed from is affirmed.

Mr. Long is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure
DISTRIBUTION:
Mr. Vincent I. Long (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

SMALL TRACTS * 3 CLASSIFICATION

Where the basis of the Manager's decisions rejecting small tract applications for classification reasons is not sufficiently detailed, the cases should be remanded for reconsideration.

Michael Rettinger, Virginia Rettinger, Los Angeles 0161659, 0161661
(September 2, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

In reply refer to:

Los Angeles 0161659
0161661
5.04g

September 2, 1960

DECISION

Michael Rettinger :
Virginia Rettinger : Small Tracts

Cases Remanded

Mr. Michael Rettinger and Mrs. Virginia Rettinger have appealed from separate decisions of the manager rejecting their applications for lands under the Small Tract Act for the stated reason that the lands are isolated public domain which do not have public access.

The appellants state they are interested in developing the small tracts for private recreational purposes and claim that there are two dirt roads within less than one-half mile from the tracts. They indicate that they are prepared to extend either road to the tracts at their own expense.

Bureau field examiners have examined the land involved. The Land Office Manager has stated that the land is not suitable for small tract development, but has not discussed in any detail the basis for his findings.

Among considerations which would dictate that the land should not be classified suitable for small tract disposition are the following:

Classification for small tract disposition would

A. Have an unduly adverse effect on conservation of natural resources, including sustained-yield management of timber resources.

B. Have an unduly adverse effect on the communities or local governments involved, such as isolated or scattered settlement; introduction of uncontrolled, nonconforming uses; conflict with community or area plans for development; or types of settlement not desired by the community or area.

C. Result in private control of resources needed for public use.

D. Lead to undesirable types of construction along public highways, parkways, or scenic areas.

E. Unreasonably interfere with the use of water for grazing purposes.

F. Unduly impair protection of watershed areas.

G. Conflict unduly with policies relating to State selections or State exchanges.

H. Unduly involve the Bureau in detailed subdivisional planning and development which is more properly the function of local real estate interests or agencies.

I. Involve the Bureau in complex cadastral surveys or otherwise in undue expenditures of time in surveying matters.

J. Involve an area more suitable for development under the townsite laws than under the Small Tract Act.

K. Lead to only partial or piecemeal disposal of an area suitable for and capable of transfer from Federal ownership.

L. Conflict unduly with the development of mineral values in the lands.

M. Prevent the classification of the land as suitable for disposal under a disposal application of another type which is otherwise allowable and which was filed before receipt of any substantial number of small tract applications or the noting of the records that the lands are "pending classification," providing there is no compelling reason for small tract classification.

Accordingly, these cases are remanded to the Los Angeles Land Office Manager for reconsideration. In making this determination, it will be necessary for the Bureau to take into consideration the recommendations of the local county planning and zoning authorities.

Earl J Thomas

Acting Director

Distribution

Hon. Joe Holt, House of Representatives
Michael Rettinger (Regular Mail)
Virginia Rettinger (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JB

80313-60

DOCKET FILES

SMALL TRACTS * 2 Applications

STATE GRANTS AND SELECTIONS * 2 School Lands

ADJUDICATION * 4 Reliance

Where a state indemnity selection application is properly filed and it is determined that its allowance would be in the public interest it is proper to reject a subsequently filed small tract application which describes land embraced by the indemnity selection application.

Reliance by an individual on information furnished by an employee of the Government cannot operate to vest in such a person rights not otherwise authorized by law.

Russell Leroy Sterner, Los Angeles 0125111 (September 6, 1960)

In reply refer to:
Los Angeles 0125111
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 6, 1960

Certified Mail
Return Receipt Requested

DECISION

Russell Leroy Sterner	:	Small Tract

Decision Affirmed

Mr. Russell Leroy Sterner has appealed from a decision of the Chief, Land Adjudication Unit, dated October 20, 1959, which rejected his small tract application for the reason that the land applied for has been classified for State Indemnity Selection.

The record discloses that the State of California filed an indemnity selection application for lands including the tract in question 12 days prior to the filing of the appellant's small tract application. Investigation revealed that the land was suitable for indemnity selection and that such disposition would be in the public interest. Hence, the disposition of the land in this manner is proper. Nelson A. Gerttula, A-27325 (June 20, 1957).

Mr. Sterner concedes on appeal that the indemnity selection is superior to his own application. He asserts, however, that both he and the professional land locator he employed to assist him were given "false and inaccurate information" by Bureau personnel, in that they were informed that the land was free from prior filings.

Nothing in the record substantiates the appellant's assertion with respect to the alleged misrepresentation. Even if this were the case, however, it could not work to the appellant's advantage in any way, because reliance by an individual on information furnished by an employee of the Government cannot operate to vest in such a person rights not otherwise authorized by law. Harold H. Beck, A-27725 (November 12, 1958).

Therefore, Mr. Sterner is not entitled to preferential consideration in the event he subsequently attempts to acquire a small tract. However, this action does not prejudice his privilege of seeking out and making application for a small tract on any land subject to such an application.

Accordingly, the decision appealed from is affirmed.

Mr. Sterner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director

G. H. Dunn

Enclosure

DISTRIBUTION

Mr. Russell L. Sterner (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

80474-60

DOCKET FILES

HOMESTEADS * 11 Soldiers Additional

SMALL TRACTS * 3 Classification

Where there is a vast amount of land in the area which has been classified for disposition as small tracts which is presently available to the public, and there is no reason for retaining a specific 40-acre tract in Federal ownership, it appears that it would be in the public interest to classify the 40-acre tract for disposition as a single unit in satisfaction of a soldiers' additional homestead right.

Bernhard Weiss Stern, Los Angeles 0136199 (September 16, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0136199
5.04g

September 16, 1960

Certified Mail
Return Receipt Requested

DECISION

Bernhard Weiss Stern : Small Tract Application

Decision Affirmed

Mr. Bernhard Weiss Stern has appealed from a decision of the Chief, Lands Adjudication Unit, dated February 15, 1960, which rejected eight small tract applications, including the appellant's, and simultaneously allowed a soldiers' additional homestead entry application filed by Mr. Leonard M. Tucker 1/. The decision held that the land in question is suitable in a broad sense for some farming use and that in view of the large amount of land in the general area which has already been classified for small tract development, it would be in the public interest to dispose of the land in satisfaction of the soldiers' additional homestead right.

The record discloses that there is now a vast amount of land in the area which has been classified for disposition as small tracts which is presently available to the public, and there is no reason for retaining the land in Federal ownership. It appears, therefore, that it would be in the public interest to classify the land for disposition as a single unit in satisfaction of the soldiers' additional homestead right. Cf. Nelson W. Hope, A-27570 (April 17, 1958).

On appeal, Mr. Stern states simply that the "land in question is not suitable in the broadest sense for farming. There are no crops being produced in this area because of lack of rain and soil conditions." He has, however, submitted nothing to substantiate his assertions. He has not shown by substantial affirmative proof that the land is not suitable for some farming use and, in the absence of such proof, the Bureau's classification will not be disturbed. Mary Refugio Jackson, et al., A-27236, etc. (February 29, 1956).

1/ Mr. Stern's small tract application, Los Angeles 0136199, filed October 24, 1955, embraces the W½NW¼SW¼SE¼ sec. 29, T. 6 N., R. 3 W., S.B.M., California. Mr. Tucker's application, filed April 24, 1959, describes the SW¼SE¼ in the same section.

Although, as a general rule, the first application filed for a tract of land will have prior consideration over subsequent applications for the same land, such priority is not absolute but discretionary. Nor is it incumbent on the Secretary, or his delegate, to classify land for disposition under any particular law, even though it meets the minimum requirements of that law, if it is in the public interest to classify the lands for another use or disposition under other applicable laws. Nelson A. Gerttula, 64 I.D. 225 (1957).

Accordingly, the decision appealed from is affirmed.

Mr. Stern is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will $5.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. Clair Engle, United States Senate
Mr. Bernhard Weiss Stern (Certified Mail)
Mr. Leonard M. Tucker (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

In reply refer to:

Los Angeles 0142605, etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 15, 1960

DECISION

Isidore Henry Strop et al. 1/ : Small Tract Applications

Decisions Vacated
Cases Remanded

Isidore Henry Strop and 30 other persons have each appealed from decisions of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated March 30, 1960, rejecting their applications filed under the Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682a), for the stated reason the land applied for is isolated public domain land, which does not have public access.

A supplemental report shows that action on the subject applications was premature, since (1) there are pending for the same lands an application under the Recreation and Public Purposes Act (43 U.S.C. 869, 869:1-3), as amended, and for a portion of the lands a State indemnity selection under 43 U.S.C. 851, 852 and (2) the lands are covered by a number of placer mining locations, the validity of which has not been determined.

In view of the above, the Manager's decisions are hereby vacated and the case records are being remanded to the Bureau's Office of the Assistant to the State Supervisor at Los Angeles for consideration of all the conflicting applications for the lands, appropriate action with respect to the reported mining locations, proper coordination of proposed actions with county officials, and classification of the lands in accordance with the existing law and policies.

Edward Woozley
Director

DISTRIBUTION:

Each appellant listed on attached Appendix "A" (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

A P P E N D I X

Name	Ser. No. Los Angeles	Name	Ser. No. Los Angeles
Isidore Henry Strop	0142605	Ralph E. Griggs	0148418
Heber W. O'Neil	0143166	Clair Lind Parker	0148419
Harry Cheffet	0149180	Harmon J. Horstman	0148628
Christy Justice	0143440	Joseph H. Sprague	0149175
Joseph H. Tomlin	0143646	Melvin James Brown, Jr.	0149176
Laura D. Tomlin	0143671	Alma I. Sprague	0149177
Zelio U. Mazzone	0144325	Elias P. Gurrola	0149698
Lester Wilson Horton	0144458	Martell A. Lloyd	0149972
Myrtle Isabel Will	0144461	Florent L. Schaeffer	0149990
Vivian T. Barabas	0144599	Melva E. Swift	0150705
Hattie M. Mayo	0145686	Edward H. Fritz	0150706
Elizabeth Pizzitola	0146132	James J. Wagner	0144459
Mary L. Dahl	0147603	Mickey Warren Deavers	0144460
Olda LaBerge	0147604	Billy Douglas Roberson	0145770
Martin O. LaBerge	0147605	Lowell R. W. Hall	0147677
Eugene Aldrick Gauthier	0147606		

DOCKET FILES

SMALL TRACTS * 1 Generally

* 3 Classification (Appraisal)

The reappraisal of small tracts at a higher value preparatory to offering leases or disposal at a direct sale, will not be disturbed in the absence of substantial and convincing evidence that the reappraised value of the land is erroneous.

Dorothy Beck Straub, Los Angeles 0131948 (September 22, 1960)

In reply refer to:

Los Angeles 0131948
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 22, 1960

Certified Mail
Return Receipt Requested

DECISION

Dorothy Beck Straub : Small Tract Application

Decision Affirmed

Dorothy Beck Straub has appealed from a decision of the Manager of the Los Angeles Land Office, dated May 8, 1959, offering the small tract applied for either at direct sale, or by lease with option to purchase, at a higher appraised value or rental than specified in the original classification order, No. 561 of May 10, 1957, classifying the lands for disposal under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1958 ed., sec. 682a *et seq*).

The small tract in question was originally classified in connection with some 250 small tract applications filed for lands in secs. 10 and 11, T. 10 N., R. 11 W., SBM, California. The lands were classified for direct sale, or for lease with option to purchase. The appraised value of the tracts was originally established at $250 per tract, with the rental being $37.50 for a three year period. Before the leases could be issued or the tracts sold at a direct sale, and in view of the substantial amount of time that had elapsed from the date of the original appraisal, a new appraisal was made in 1959 and the classification order was amended to reflect the new appraised values, this being in accordance with the approved procedures adopted by the Bureau. The new appraisal resulted in an increase in the valuation of each tract from $250 to $900, and an increased rate of rental from $37.50 to $135 for a three-year period, with option to purchase the tract at the appraised value.

The appellant contends in substance that the difference in the values of the tracts represents an increase of from 250 to 260%, and that this increase is not justified for such a short period of time, 1957 to 1959, for unimproved land without water of any kind. The appellant also contends that the delay of the Manager in issuing the lease for the tract, with the right to purchase it, was unreasonable; that there was no basis for increasing the appraised valuation of the tract either in fact or in law; that the appraisal relied upon by the Manager, was not based on proper facts for an appraisal, that it was made by an inexperienced appraiser without proper investigation, and without permitting the applicant to be heard on the matter of the appraisal or the reason for the increase, or to cross-examine such appraiser; and that desert lands of the same character are being sold by private individuals for as little as $25 to $150 per acre. The appellant claims a right, through her attorney, to cross-examination to ascertain the facts, if any, upon which the alleged increase in valuation is based between the time of the appraisal made on May 10, 1957, and the time of the appraisal as set forth in the decision appealed from.

The contentions of the appellant are without merit. The reappraisal and revaluation of the land was made to determine the actual value of the tracts involved, since in order to dispose of them at a direct sale, the regulations provide that the applicant tender the fair market value of the land when required (43 CFR 1958 ed., 287.5a), and where the land is classified for lease with option to purchase the net purchase price of the unimproved land will be the appraised value at the time of the lease. (43 CFR 1958 ed., 257.13). It appears from the records that the original appraisal of the tracts did not at the time it was made reflect the true market value. In arriving at the new appraised value of $900 for each of the tracts, the land examiner used all of the appraisal information available to him, which included information as to the market value of similar type lands sold in that area over a period of years from 1955 to 1957. The sales information shows a number of sales were made for prices ranging from $150 to $250 per acre, and on the basis of these figures the examiner established an appraised value of $180 per acre for the tracts in question.

It follows then, that the appellant has failed to submit any substantial or convincing evidence that the reappraised value of the land is erroneous, or not founded on the basis of fact and such appraised value will not be changed. Cf. Daniel Hicken, A-27877 (March 5, 1959).

With respect to the appellant's contention that the delay in processing her application under the original classification order was unreasonable, it has been explained to all of the small tract applicants concerned that such a delay was occassioned by the large workload and limited staff in the Los Angeles Land Office.

With respect to the appellant's contention that she should be allowed the right of cross-examination, which would amount to the same thing as the granting of a hearing, such cross-examination or hearing cannot be allowed, because there is little likelihood that a hearing or cross-examination would develop facts decisive of the issues and no showing has been made by the appellant that she will be able to present evidence controverting the facts of record. Margaret A. Andrews et al., 64 I.D. 9 (1957). Accordingly, the right of cross-examination by the appellant is hereby denied.

The decision appealed from is therefore affirmed.

The record indicates that $900 does not exceed the fair market value of the land. When this decision becomes final the case will be remanded to the State Supervisor at Sacramento, California, for determination whether values have increased since the 1959 appraisal and, if so, to have the land reappraised and offered to the appellant at the reappraised value.

Mrs. Dorothy Beck Straub is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee is $5.00. In taking an appeal there must be strict compliance with the regulations.

Earl J Thomas
Acting Director

Enclosure

DISTRIBUTION:

Mr. Clayton O. Straub, Attorney for Appellant (Certified Mail)
Mrs. Dorothy Beck Straub (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 053489
053696
054894
5.04g

October 11, 1960

Certified Mail
Return Receipt Requested

DECISION

Joseph Short	:	
Marion Karch	:	Small Tract
Leon L. Barsch	:	

Decision Affirmed as Modified

Joseph Short, Marion Karch and Leon L. Barsch have appealed from the decision of the Manager, dated April 14, 1960, which rejected their small tract applications for the reasons that the lands are rugged and steep and disposal under the small tract law would involve costly detailed subdivisional planning and cadastral surveys and probably result in piecemeal disposal. The decision also states that the classification report classified the subject land as proper for retention in Federal ownership for use in watershed protection, wildlife, recreation, and multiple use management.

The appellants deny that the land is rugged and steep and that it would require costly planning and surveys and they allege that the denial of their applications takes from them the opportunity to live in a place of their choice.

The appellants submitted photographs showing that a few flat areas do exist in the otherwise mountainous terrain.

The Manager's decision failed to disclose all the facts in this case. The field reports show that the Rush Creek Road, which will terminate at the Trinity River Bridge will require 100-120 foot rights-of-way and that this will require land from two of the parcels applied for as residential sites. Furthermore, the area is a source of aggregate and impervious materials needed by the Bureau of Reclamation in its construction program. It is not in the public interest to convey public resources that are needed for public programs. In addition to the foregoing, the record shows that the Trinity Dam Project has created a condition of unstable land values whereby the land cannot at this time be appraised with accuracy and reliability and disposition of the lands would thus not be consistent with the Secretary of the Interior's policies against speculation in public lands.

The Department has held that until the land is classified as suitable for small tract purposes the decision as to whether the land should be disposed of under the Small Tract Act, or not at all, remains within the discretion of the Secretary. Darwin M. Cecil, Joseph Casaletto, A-27047 (January 14, 1955). In determining whether a certain tract should or should not be disposed of, not only are the specific needs of the individual applicant considered, but, it is also necessary to consider the general or over-all effect that the disposal would have. Cf. Lafayette M. Hughes, A-27213 (December 28, 1955); Nelson A. Gertlula, 64 I.D. 225 (1957).

Moreover, it is not incumbent on the Secretary, or his delegate, to classify land for disposal under any particular law, even though it meets the minimum requirements of that law, if the lands are found to be more suitable for retention in Federal ownership in furtherance of a public purpose. Cf. Randall Storey, A-27573 (September 22, 1958).

In view of the foregoing, it must be concluded that the appellants have not shown in what respect the adverse classification is in error. Mary Refugio Jackson, et al., A-27236, A-27237 (February 29, 1956).

Accordingly, the Manager's decision is affirmed as modified.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $15.00. In taking an appeal there must be strict compliance with the regulations.

Acting Director

Enclosure

DISTRIBUTION:
Edwin J. Regan, Attorney for the Appellants (Certified Mail)
Joseph Short (Regular Mail)
Marion Karch (Regular Mail)
Leon L. Barsch (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

DOCKET FILES

SMALL TRACT * 3 Classification

Small tract applications for lands that are in part required for use as road rights-of-way, and that are in an area that is a source of aggregate and impervious materials in a construction program, are properly rejected.

Small tract applications for lands located in a construction area where land values are unstable and cannot be appraised with accuracy and reliability and disposition would not be consistent with the Secretary of the Interior's policies against speculation in public lands are properly rejected.

Joseph Short, et al., Sacramento 053489, etc. (October 11, 1960)

DOCKET FILES

SMALL TRACTS * 2 Applications

Where the basis for the rejection of small tract applications is not discussed in sufficient detail in the decisions rejecting them, the decisions will be vacated, and the cases remanded for further consideration.

Clayton A. Granger et al., Los Angeles 0107336 etc. (October 11, 1960)

In reply refer to:
Los Angeles 0107336 etc. 1/
5.04g

October 11, 1960

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

Clayton A. Granger et al. : Small Tract Applications

Decisions Vacated
Cases Remanded

Mr. Clayton A. Granger and 9 other persons 1/ have appealed from decisions of the Chief, Lands Adjudication Section, Los Angeles Land Office, dated April 13, 1960, rejecting their applications filed under the Small Tract Act, as amended (43 U. S. C., 1958 ed., sec. 682a), for the stated reason that the lands applied for are dissected by live washes, or are situated on rough, rocky, mountainous terrain, rendering them unsuitable for small tract use.

Bureau field examiners have examined the land involved. The Land Office Manager has stated the land is not suitable for small tract development, but has not discussed in sufficient detail the basis for his findings. He does not show under the criteria for small tract classification, how he reaches the conclusion that the lands are not suitable for small tract classification. Neither does he indicate the views of local authorities with respect to the classification of the lands in connection with their responsibilities for public health and safety, provision for and maintenance of public roads and other facilities, and other matters under their jurisdiction.

Accordingly, the decisions appealed from are hereby vacated, and the cases remanded to the Manager through the Bureau's office of the Assistant to the State Supervisor at Los Angeles for reconsideration. In making this determination, it will be necessary for the Bureau to take into consideration the recommendations of the local county planning and zoning authorities. Appropriate action will in due course be taken by the Manager on the appellants' applications.

Earl J Thomas
Acting Director

Distribution:
Each appellant listed on attached Appendix "A" (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

1/ For the names of the appellants and the serial numbers of their cases see attached Appendix "A"

APPENDIX "A"

Name of Applicant	Serial Number Los Angeles
Clayton A. Granger 2635 Studebaker Road Long Beach, California	0107336
Benton Beckley P. O. Box 1000 Palm Springs, California	0115000
Harry Moses Hess Box 97 Morongo Valley, California	0115001
Axel Herman Rosvall Star Route Morongo Valley, California	0115002
Marie Fulwiler 1085 Raymond Ave. Long Beach 4, California	0120265
Monte V. Law P. O. Box 67 Morongo Valley, California	0122353
Mrs. Valentine McCracken Morongo Valley, California	0123243
Herbert Weaver 12330 - 15th St. Yucaipa, California	0127162
Charlotte R. Lockwood 4764 Sierra St. Riverside, California	0135740
Arthur George Lockwood 4764 Sierra St. Riverside, California	0135743

DOCKET FILES

SMALL TRACTS * 2 Applications

RULES OF PRACTICE * 1 Generally

Where a small tract application is erroneously rejected by a decision in which the issues adjudicated do not apply, the decision will be vacated and the application reinstated for further appropriate action.

John H. Kline, Los Angeles 0117609 (October 19, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0117609
5.04g

October 19, 1960

DECISION

John H. Kline	:	Small Tract Application

Decision Vacated In Part
Case Remanded

Mr. John H. Kline has appealed from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated March 24, 1960, rejecting his above-identified small tract application, along with a large number of others, for the reasons that the lands involved were classified as being mineral in character because of the valuable limestone deposits contained therein, and because the lands are included in valid existing mining claims.

The lands in the other applications are located in T. 4 N., R. 2 E., SBM, California. It has been discovered subsequent to the issuance of the decision from which the appeal was taken, that the land applied for by the appellant in this case is located in T. 4 N., R. 3 E., SBM, California, and that his case was erroneously included in the group rejected by the decision.

Accordingly, since the issues involved in the decision rejecting the application do not apply in this case the decision is vacated in so far as it pertains to this application. The case record is remanded to the Manager of the Los Angeles Land Office through the Bureau's office of the Assistant to the State Supervisor, in order that appropriate action may be taken in connection therewith at such time as the land applied for has been properly classified.

For the Director:
John B. Piccolo

DISTRIBUTION:
Mr. J. B. Tietz, Attorney for the Appellant
Mr. John H. Kline (Regular Mail)
Samuel O. Duvall & Associates (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec.
Remanded A-28717
10-30-61

DOCKET FILES

RULES OF PRACTICE * 10 Standing to Appeal ST

Where an appeal is filed by a person purportedly acting as an attorney for the appellant without a showing that he was formally admitted to practice before the Department, or admitted to practice before the courts of any State, Territory, or the District of Columbia, or that he is appealing on behalf of a member of his family, the person signing for the appellant is not authorized to practice merely because he has a power of attorney, and the appeal must be dismissed.

Love Mae Moore Los Angeles 0156795 (November 14, 1960)

In reply refer to:

Los Angeles 0156795
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

November 14, 1960

Certified Mail
Return Receipt Requested

DECISION

Love Mae Moore : Small Tract Application
:
:

Appeal Dismissed

Mrs. Love Mae Moore has appealed from a decision of the Manager, Los Angeles Land Office, dated April 12, 1960, rejecting her above-identified application filed under the Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682a), for the stated reason that the lands cannot be classified for small tract purposes because such classification would be adverse to the recommendations made by local governing authorities, would not be in accordance with the present departmental policies and procedures relative to such matters, and would not be in the public interest.

A careful review of the record in the instant case discloses that the appellant did not sign the notice of appeal herself, but that it was signed by Burnis J. Sharp, who purportedly was representing her under a power of attorney. The record contained no evidence of the power of attorney under which Mr. Sharp was acting for the appellant, and he was requested to furnish evidence that he is qualified to practice before the Department of the Interior as provided for by the pertinent regulations contained in 43 CFR Part 1.3. Mr. Sharp did not furnish evidence that he was qualified to practice before the Department as specified in the applicable regulations, but the appellant has subsequently submitted a general power of attorney authorizing Burnis J. Sharp to act in her behalf with respect to the matters connected with her small tract application.

However, it has been consistently held by the Department that where an appeal is signed by a person other than the appellant, that person must be in one of the categories of persons authorized to practice before the Department, i.e., one who has been formally admitted to practice before the Department, or admitted to practice before the courts of any State, Territory, or the District of Columbia, or that he is appealing on behalf of a member of his family. The person signing for the appellant is not authorized to practice merely because he has a power of attorney. In such cases an appeal must be dismissed. CF. *Lily L. Pearson et al.*, A-27505 (November 15, 1957); *Hattie M. Fults, Ernest Maloof*, A-27509 (November 19, 1957).

Accordingly, the appeal in the instant case is hereby dismissed. Mrs. Love Mae Moore is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See the enclosed Form 4-1365. If an appeal is taken the amount of the filing fee is $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director

A. H. Dunn

Enclosure

Distribution

Mrs. Love Mae Moore (Certified Mail)
Mr. Burnis J. Sharp (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec
affirmed A-28822 - 6-22-62

DOCKET FILES

RD

Small Tract * 2 Application

* 6 Sales

Where a small tract lessee has been given ample opportunity to comply with required construction improvements and adjustments, and he fails to comply, his purchase application for the tract is properly rejected.

Carl C. Kirk, L.A. 089181 (November 30, 1960)

RD

In reply refer to:

Los Angeles 089181
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

November 30, 1960

Certified Mail
Return Receipt Requested

DECISION

Carl C. Kirk : Small Tract

Decision Affirmed

Carl C. Kirk has appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated August 19, 1960, rejecting his application to purchase the tract included in his small tract lease for the reason that he had failed to comply with the necessary improvements and adjustments required of him.

The record shows that a lease for the tract involved was issued to the appellant, effective June 7, 1951, for a term of three years, pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C., 1958 ed., sec. 682a), as amended. The lease terms contained specific provisions relating to construction of substantial improvements appropriate for use and occupancy of the land during the life of the lease and states the lease is subject to cancellation for failure to observe or comply with any of the terms and conditions contained therein. The lease included an option to purchase provided the lessee has made the required improvements and complied with the terms and conditions of the lease. The appellant's application to purchase filed on April 19, 1954, during the life of the lease, stated that he had not complied with all of the terms and conditions of the lease, but that he had constructed a cabin and corrals. Subsequently, a field examination of the land disclosed: (1) that the improvements on the land consisted of a one room frame cabin on a wood foundation and a fenced corral; (2) junk was strewn about the place: (3) the cabin was in need of repair and painting and needed to be placed on concrete piers or concrete slab foundation. Pursuant to the examination the appellant was notified by suspension notice of August 28, 1957, to place the cabin on concrete piers or slab foundation, repair and paint it and clean up the junk within 60 days and upon compliance therewith to notify the land office. Upon his failure to respond, a notice of non-compliance was sent to him dated April 24, 1958, in which he was allowed 30 days to submit proof of compliance or his application to purchase would be subject to rejection. The appellant replied in letter received May 28, 1958, in which he claims to have done some work and requests additional time to complete the required work. His letter was not formally acknowledged. On November 19, 1958, however, an improvement compliance form was sent to him and upon his failure to submit proof of compliance as of August 19, 1960, his application to purchase was rejected.

In his appeal, the appellant does not contend that the decision is in error but asserts it was his belief that all requirements had been met when he filed his purchase application; that he has lived on the property half of the time since 1952; paid possessary taxes since 1953 and expects to complete the required work by Janurary 1, 1961.

In the instant case, the appellant has had possession of the tract for several years after the expiration of the lease. During that period he has been given ample opportunity to make the required improvements and adjustments, which he has failed to do. A small tract lessee is not entitled to purchase the leased land when he has failed to construct substantial improvements on the leased tract as required by the terms of his lease. Joseph M. Czaplinski, A-27492 (November 15, 1957).

Accordingly the decision appealed from rejecting the application to purchase is affirmed. The appellant is allowed 90 days from the date of receipt of this decision within which to remove his improvements from the land or make other disposition thereof; otherwise, the improvements will become the property of the United States. 43 CFR 257.19.

Carl C. Kirk is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Carl C. Kirk (Certified Mail)
Lands Staff Officer
Appeals List No. 1
R.L.E.

appeal to Sec
affirmed A-28734

DOCKET FILES

SMALL TRACT * 2 Application
* 3 Classification

It is proper to require a Small Tract statutory preference right applicant to conform his application to the area, classification and dimensions of the tract as specified in a classification order.

Robert Fondiller, Los Angeles 0137829 (December 1, 1960)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0137829
5.04g

December 1, 1960

Certified Mail
Return Receipt Requested

DECISION

Robert Fondiller : Small Tract Application

Decision Affirmed

Robert Fondiller has appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated August 3, 1960 which allowed him 60 days from receipt of the decision within which to conform his small tract application to 2.5 acres and to comply with certain other stipulations.

Pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1958 ed., 682a) and the regulations thereunder (43 CFR., Part 257) the appellant filed his application on January 18, 1956 for land described as the E½SW¼SE¼SE¼ Sec. 2, T. 5 N., R. 1 E., S.B.M., containing 5 acres. Item 2 of the application, in pertinent part, reads: "I hereby apply to lease or purchase * * *, one tract of public land described in item 8 or any part thereof which is classified as a single tract for disposal under the Act."

By order No. 583 of February 24, 1958 (23 F.R. 1576), certain lands were classified as suitable for small tract purposes, and on March 17, 1959, a portion of the classified lands, including the tract sought by the appellant, was opened to all valid statutory preference applications which had been filed prior to the classification. The appellant was one of the applicants entitled to a preference right under the provisions of the Department's regulation, 43 CFR, 1959 Supp., 257.5(a), provided he would conform his application to the area and dimensions of the tract as specified in the classification order. The opening order stated that the tracts varied in size from 2.5 to 5 acres more or less, and that all applicants would be afforded an opportunity to obtain the tract by lease with option to purchase or by direct sale at the appraised price. The land sought by the appellant was reduced from 5 to 2.5 acres and is identified as Lot 256 on the supplemental plat of survey.

In his appeal, the appellant does not relinquish any claim to the 2.5 acres described in the decision appealed from but requests that the decision be amended to the 5 acres originally applied for.

The small tract regulation (43 CFR 1959 Supp. 257.5(a)) provides in pertinent part: "An application filed prior to the receipt by the land office of notice that the area is under consideration for small tract classification, will be given a priority only if (1) the land is thereafter classified for the type of site applied for; (2) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; * * *." Moreover, under the terms of the appellant's application he applied for a described tract of land containing 5 acres "or any portion thereof which is classified as a single tract."

The determination as to the size of the tracts that were opened to the preference right applicants was made by the authorized officer pursuant to the classification order and in accordance with the regulations. The appellant has presented no arguments in his appeal which would warrant changing the decision of the Land Office, and that decision is hereby affirmed.

Accordingly, the appellant is allowed 30 days from receipt of this decision within which to inform this office whether he desires to comply with the requirements made in the decision of the Land Office, or to appeal to the Secretary of the Interior.

If an appeal is taken to the Secretary of the Interior, it must be in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Robert Fondiller (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

RD

DOCKET FILES

SMALL TRACTS * 1 Generally (Appraisal)

PUBLIC LANDS * 10 Appraisal

The appraisal of land offered for sale under the Small Tract Act will not be disturbed where the record shows that approved procedures were utilized and all relevant factors were considered. The burden is on the appellant to show by substantial affirmative evidence that the appraisal is erroneous.

James A. Buchanan, Jr., Sacramento 048056 (December 2, 1960)

RO

In reply refer to:
Sacramento 048056
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 2, 1960

Certified Mail
Return Receipt Requested

DECISION

James A. Buchanan, Jr. : Small Tract
:
Decision Affirmed

Mr. James A. Buchanan, Jr. has appealed from a decision of the Manager of the Sacramento, California, Land Office, dated August 1, 1960, classifying the land applied for as suitable for direct sale under the Small Tract Act (52 Stat. 609), as amended at the appraised price of $1,750. Advanced rental of $15.00 was credited on the purchase price and the decision called for the balance of $1,735 within 60 days. The decision provided that the tract was subject to all existing rights-of-way and to a right-of-way 30 feet in width on the east boundary for street and road purposes and for public utilities.

The appellant contends that the appraised price of the land as set by the Bureau is at least 25% too high in view of the rights-of-way reserved, the very limited water supply available for this tract, and the fact that only about 50% to 60% of the tract is suitable for building purposes.

The tract in question, one of 9 tracts in the $NE\frac{1}{4}NW\frac{1}{4}$ of section 14, T. 33 N., R. 7 W., M.D.M., which were classified for sale, is located approximately one mile north of the small village of French Gulch and 22 miles northwest of Redding, California, the county seat. Situated in an area containing many recreational centers and near a good oiled road, with telephone and electric power available, the lot is highly desirable for residential purposes. The eastern one-half of the tract, upon which are located two cottages owned by the appellant, is fairly level and contains excellent building sites.

The appraised price of the tracts in the $NE\frac{1}{4}NW\frac{1}{4}$ of section 14 is based on sales of comparable lands in nearby sections 27 and 34. The record refers to sales of comparable building sites in those sections at prices ranging from $500 an acre to $900 for a lot 60 x 90 feet. It was concluded from an evaluation of these sales that a good building lot in the $NE\frac{1}{4}NW\frac{1}{4}$ of section 14, facing a stream, with good amenities and utilities available, will command a price of $500 per acre. That figure was used as the standard in arriving at the fair market value of the applied for tracts, which were valued at from $300 to $500 per acre depending on the topographic features of the tracts, the available water, access and rights-of-way reservations, and the scenic features. After considering these factors it was concluded that the five acre tract for which the appellant has applied is worth 70% of the standard price, or $1,750.

For these reasons, it is not apparent on its face that the appraisal is erroneous. It was made in the proper manner and seems to reflect the fair market value. In such cases burden is upon the appellant to prove by substantial affirmative evidence that the appraisal is erroneous. Daniel Hicken, A-27877 (March 5, 1959). Mr. Buchanan has not submitted such evidence.

Therefore, the decision of the Manager is affirmed.

Mr. Buchanan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A.H. Farr

Enclosure

DISTRIBUTION:
Mr. Hugh Kenneth Forsman, Attorney for Appellant (Certified Mail)
Mr. James A. Buchanan, Jr. (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLMadsen

In reply refer to:

Los Angeles 0119488
Arizona 08429, et al.
5.04e:C

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 16, 1960

DECISION

George B. Gibbons, et al. : Small Tract Applications
Edward M. Turnquist, et al. : Protests

Applications Rejected

George B. Gibbons and the other small tract applicants shown on Appendix "A", have filed applications under the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended, (43 U.S.C. 682a), and the regulations thereunder (43 CFR, 1954 ed., Part 257) as amended, (1958 Supp.)

Edward M. Turnquist and the other persons shown on Appendix "B", have filed protests against the lease or sale of lands under certain of these small tract applications.

The records show that the lands described in the respective small tract applications have been withdrawn under the statutory powers of the Secretary of the Interior pursuant to Section 3 of the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 416).

The lands in question are adjacent to the Colorado River channel and either may be subject to flooding or may be necessary for future river control measures or affected by such measures.

Accordingly, it has been determined by the Secretary of the Interior that none of the Reclamation withdrawn lands along the lower Colorado River will be opened for lease or sale under the Small Tract Act, supra.

All of the applications listed in Appendix "A" are therefore hereby rejected. Accordingly, it is unnecessary to rule upon the protests.

The advance rentals paid by the applicants will be refunded to them in due course from the Los Angeles and Phoenix Offices of the Bureau of Land Management. The $10 filing fee will be returned to any applicants whose applications were filed on or before March 10, 1955. The filing fee paid with later filed applications will not be returned (43 CFR 257.8, Circular No. 1899, January 10, 1955).

The regulations of the Department of the Interior do not accord a right of appeal from a decision of the Director of the Bureau of Land Management, which, prior to promulgation, has been approved by the Secretary of the Interior (43 CFR 221.31).

Edward Woozley
Director

Approved: December 16, 1960

Assistant Secretary of the Interior

Attachments (2)

DISTRIBUTION:

Each Applicant and Protestant
Cong. Joe Holt
Cong. John J. Rhodes
Sen. Clair Engle
Cong. Harry Sheppard
Sen. Carl Hayden
Sen. Barry Goldwater
Sen. Thomas H. Kuchel
Hon. D. A. Saund
Cong. Edgar W. Hiestand
Regional Director, Bureau of Reclamation, Boulder City, Nevada
Mr. Robert Coote, Asst. Secretary, Public Land Management
Commissioner, Bureau of Reclamation
Director, Fish and Wildlife Service
Director, National Park Service
Commissioner, Bureau of Indian Affairs
Mr. P. A. Douglas, Wildlife Conservation Board
AA-1 (5)
AA-2 (5)
SS-California (5)
SS-Arizona (5)
Asst. to SS-Los Angeles (10)
Each Case File

APPENDIX "A"

Section A- Applications filed in Los Angeles, California

George B. Gibbons	Los Angeles	0119488
Harold J. Russell		0124214
Antonio S. Servera		0124215
Raymond M. Hertel		0124218
John P. Esson		0124221
Walter A. Zera		0124225
Joseph H. Freeman		0124228
Arthur Corpening		0124229
Leonard Corpening		0124231
Ernest A. Baker		0124249
Curtis E. Stearns		0124628
Preciliano Ramirez		0124651
Manuel H. Barba		0124759
Max O. Hullett		0125735
Luis Ysais		0125747
Gulliver M. Hullett		0125751
John C. Lampson		0125755
Benny P. Montoya		0126616
Ernest R. Johnson		0127308
Monte R. Davis		0128445
Thomas D. Hickey		0128457
Edward P. Hood		0128753
James L. Sowards		0130716
Alden J. Brinker		0130717
Clarence J. Pierce		0130718
William McCoy		0132025
Floyd D. Smith		0132104
Paul S. Johnson		0132107
John F. Hayes		0132198
Phil Chain		0132740
Sherman E. Sanders		0132747
Audley L. Anderson		0132748
Lindsay S. Wallace		0132793
Cinema T.V. Post No. 561, The American Legion		0132901
Micheal J. Sullivan		0133177
Claude S. Potter		0133509
Walter J. Potter		0133510
James O. Russell		0133513
Nellie R. Proctor		0133701
Russell E. Hermance		0133834
George A. Sowards		0134185
Earl J. Logue		0134216
Donald Van Dyke		0134358
Opal A. Stiver		0134560
Daniel J. Breen		0134563

Jean Patterson	Los Angeles	0134724
Polly K. Jeffers		0134775
John Gibbs		0135070
Joe E. Phillips		0135213
John M. Carroll		0135230
Mildred P. Ashleigh		0135658
Robert F. McElroy		0136410
John J. Luther		0136537
Evelyn M. Schenstrom		0136565
Emmett L. Brinker		0136580
Francis M. Cook		0136989
Maxwell H. Gill		0137870
Edward T. Gribbon		0138321
Helen I. Connor		0138702
Nancy Warner		0138730
Arthur E. Tittenson		0139426
Wilfred C. Smith		0139454
Elmer A. Bowers		0139527
E. Joan Turnquist		0139532
Robert A. Norsen		0139533
Wynn A. Robbins		0139534
Daniel E. Eckerman		0139549
Wynn J. Robbins		0139563
Mabel B. Heller		0140477
Irl R. Goshaw		0140538
LeRoy Jones		0142571
Curtis Nelson		0142699
Abe Swartz		0142732
Tom Fisher		0142901
Fiorine Calcinnaro		0143135
Mary A. Cole		0143158
Dr. Paul E. DeLoe		0143161
Simonne H. Lindzon		0143316
James A. Starrett		0143358
James J. Lockhart		0143372
Colorado River Horseman's Assn.		0148157
Ethel L. Farmer		0149051
Lawrence A. Andrews		0149678
Lawrence A. Andrews, Jr.		0149726

Section B - Applications Filed at Pheonix, Arizona

John H. Fay	Arizona	08429
Corvin W. Krause		010789
Byron Pulver		010790
Mack R. Harrison		010826
Harold L. Harrison		010827

APPENDIX"A" (CONT'D.)

Robert O. Ritchie	Arizona	010844
Fred Adams		010855
Russell B. Jennings		010876
Russell J. Harrison		010877
William J. Cox		010878
James Hartsuiker		010888
Frederick W. Nuerwell		010915
Austin T. Guest		010933
Charles J. Lynch		010934
Charles L. Shontz		011010
Clifford R. Craig		012389
Wesley C. Gildart		012515
Henrietta Lawhead		013983
Harvey L. Mercer		015985
James F. Beall, Jr.		016252
Lelia J. Beall		016253
Edwin J. Guldner		016264
Alvin Moore		016430

APPENDIX "B"

Protestants	Serial No. of Applications being protested
Edward M. and Marguerite Turnquist,	Los Angeles 0133177
E. Joan Turnquist	0133177
Edward M. and Marguerite Turnquist	0136989
Robert A. Norsen	0136989

appeal to Sec
affirmed A-28809 1-30-63

DOCKET FILES

SMALL TRACTS * 3 Classification

It is proper to reject small tract applications where the land has been classified as valuable for minerals, and where use of the land for small tract purposes would interfere with development of the land under the mineral laws.

Renate M. Sargent, Bert Leander Sargent, Los Angeles 0163319, 0163320

(December 21, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0163319
0163320
5.04g

December 21, 1960

Certified Mail
Return Receipt Requested

DECISION

Bert Leander Sargent	:	Small Tract Applications
Renate M. Sargent	:	

Decision Affirmed

Mrs. Renate M. Sargent and Mr. Bert Leander Sargent have appealed from separate decisions of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated April 8, 1960, rejecting their above-identified applications filed under the Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682a), for the stated reason that the land is more valuable for "mining and mineral leasing purposes."

The appellants do not cite any error in the decisions rejecting their applications. However, they contend that they want the land upon which to build a home for themselves and their family. The appellants also claim that the reason for the rejection of their applications is not too clear, but that it appears it is because of a claim made on the land by a man and his wife, who already own 40 acres near the land in question. The appellants also claim that the land applied for has not been deeded since the year 1889, and that no claim was made for the land until they had filed their applications.

The land in question is located on the northern slope of Black Mountain, about 10 miles southwest of the town of Escondido, San Diego County, California. The land is composed of dark basic igneous rocks grading from fine grained basalt to coarse grained diorite. At least two veins of very hard silica extend through the land, and scattered through the silica in irregular stringers are small seams of arsenopyrite, which contain values in gold and silver. The mineral zones appear to be strong but there is insufficient development work to prove the extent of mineralization. There are mine workings on the land, which consist of drifts running in southerly and northerly directions, and a shaft of unknown depth located at the portal of the south drift. Samples of ore taken from the drifts assayed $1.62 in gold and silver, and 2.17% arsenic. Samples of ore taken from an old ore bin at the mine workings show higher values of gold and silver, and arsenic oxide. Accordingly, the land in question was classified as mineral in character and more suitable for disposition under the mineral laws than for small tract purposes.

Under new policies and procedures adopted recently by the Department, land will not be classified as suitable for small tract purposes where such use will unduly interfere with development of the mineral values therein. Moreover, it has been consistently held by the Department that where lands are determined to be more valuable for their mineral development, and there is evidence of mining claims on the land, it is proper to refuse to classify such land for disposition under the Small Tract Act. Cf. J. W. Allen et al., V. E. A. Mohler et al., A-26931 (November 5, 1954).

Accordingly, the appellant's applications were properly rejected, and the decisions appealed from are affirmed.

Mrs. Renate M. Sargent and Mr. Bert Leander Sargent are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee is $5.00 for each application involved. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Piccolo

Enclosure

DISTRIBUTION:

Mrs. Renate M. Sargent (Certified Mail)
Mr. Bert Leander Sargent (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

85644-60

LD DOCKET FILE

ADJUDICATION * 1 Generally
SMALL TRACTS * 3 Classification

Where the decisions rejecting small tract applications do not discuss in sufficient detail the reasons for the rejections, the decisions will be set aside and the cases will be remanded for further consideration.

Robert H. Schwable et al., Los Angeles 0158907, etc. (December 21, 1960)

In reply refer to:
Los Angeles 0158907, etc. 1/

5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 21, 1960

DECISION

Robert H. Schwable et al. 1/	:	Small Tract Applications

Decisions Vacated
Cases Remanded

Mr. Robert H. Schwable and 52 other persons 1/ have appealed from decisions of the Chief, Lands Adjudication Section, Los Angeles Land Office, dated March 30, 31 and April 1, 1960, respectively, rejecting their applications filed under the Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682a), for the stated reason that the land is isolated public domain land without public access.

Bureau field examiners have examined the land involved. The Land Office decisions stated the land is not suitable for small tract development, but did not discuss in sufficient detail the basis for the findings. It is not shown under the criteria for small tract classification how the conclusion was reached that the land is not suitable for small tract classification. Neither are the views of local authorities indicated with respect to the classification of the land in connection with their responsibilities for public health and safety, provision for and maintenance of public roads and other facilities, and other matters under their jurisdiction.

Accordingly, the decisions appealed from are hereby vacated, and the cases remanded to the Land Office through the Bureau's office of the Assistant to the State Supervisor at Los Angeles for reconsideration. In making this determination, it will be necessary for the Bureau to take into consideration the recommendations of the local county planning and zoning authorities. Appropriate action will in due course be taken by the Land Office on the appellants' applications.

Edward Woozley
Director

1/ For the names of the appellants and the serial numbers of their respective cases see attached Appendix.

DISTRIBUTION:
Each appellant listed on the attached Appendix (Regular Mail)
Lands Staff Officer
Appeals List No. 1
Hon. Thomas M. Pelly, House of Representatives
RBO

APPENDIX

Name of Applicant	Serial Number Los Angeles
Robert H. Schwable 1109 Broadway Santa Monica, California	0158907
Milton H. Fisher 899 North 11th Avenue Upland, California	0158912
Norma E. Fisher 899 North 11th Avenue Upland, California	0158913
Ben D. Balanag 54 East Paisley Chula Vista, California	0158925
Richard A. Gregory 14757 - 25th Avenue, N.E. Seattle 55, Washington	0158926
Natalie Hammerle 739 W. Rosewood Court Ontario, California	0159181
Merle S. Hammerle 739 W. Rosewood Court Ontario, California	0159182
Helen B. DeMasi 7519 Loch Alene Avenue Rivera, California	0159239
Frank F. DeMasi 7519 Loch Alene Avenue Rivera, California	0159240
Norma L. Coen 9456 La Salle Avenue Los Angeles 47, California	0159241
Jack W. Coen 9456 La Salle Avenue Los Angeles 47, California	0159242
Dorothy Mae Siereveld 10260 Live Oak Avenue Arcadia, California	0160254

Name of Applicant	Serial Number
	Los Angeles
Harry Edward Siereveld 4938 Willmont Avenue Temple City, California	0160380
Mildred Caroline Siereveld 4938 Willmont Avenue Temple City, California	0160381
Homer C. Price Route 1, Box 445 Newhall, California	0160478
Peter Joel Smith 24912 Walnut Street Newhall, California	0160479
Frieda V. Rediger 1507 Bank Street South Pasadena, California	0160480
Mabel E. Jamison 1507 Bank Street South Pasadena, California	0160481
Betty Jean Smith 24912 Walnut Street Newhall, California	0160482
James L. Price 14721 Ararat Street Sylmar, California	0160483
Ray Otto Haldy 20356 Cantara Street Canoga Park, California	0161559
Marilyn Jean Morgan 9978 Wheatland Avenue Sunland, California	0161560
Jeanie Frances Allman 327 S. Lincoln Street Burbank, California	0161561
James Edmund Allman 327 S. Lincoln Street Burbank, California	0161562

Name of Applicant	Serial Number Los Angeles
George R. Jenner 38649 Sage Tree Street Palmdale, California	0161564
Douglas K. Swinnerton 3510 McNally Avenue Altadena, California	0161780
Dollie Rachael Clark 1655 Rubio Drive San Marino, California	0161781
Lucinda F. Clark 1655 Rubio Drive San Marino, California	0161782
Robert W. McKee 8538 Fairview Avenue San Gabriel, California	0161783
Gerald G. Gerke 9929 Sepulveda Blvd. Sepulveda, California	0163622
Martha V. King 9929 Sepulveda Blvd. San Fermando, California	0163623
Shirley Justine Robinson 13230 Reliance Street Pacoima, California	0163624
Marjorie Noema Kurth 1205 S. Walnut Avenue West Covina, California	0163629
Madge M. Perkins 1205 S. Walnut Avenue West Covina, California	0163630
Bernadine M. Guglielmi 9950 Reseda Blvd. Northridge, California	0163631
Tad M. Walsh 2255 Big Tujunga Canyon Rd. Tujunga, California	0163669

Name of Applicant	Serial Number Los Angeles
Virginia M. Walsh 2255 Big Tujunga Canyon Rd. Tujunga, California	0163670
James Wilson Rosensteel Preston, Missouri	0163772
Agnes E. Frerks 3340 Josephine Street Lynwood, California	0166233
Gerald N. Frerks 3340 Josephine Street Lynwood, California	0166234
Laura P. Frerks 325 N. Broadway c/o Small Tract Owners Association Santa Ana, California	0166235
Gustav A. Frerks 325 N. Broadway c/o Small Tract Owners Association Santa Ana, California	0166236
Forrest H. Ward 1430 Harding Street Long Beach 5, California	0166238
Marjorie F. Ward 1430 Harding Street Long Beach 5, California	0166239
Winifred D. Vader c/o Small Tract Owners Association 325 N. Broadway Santa Ana, California	0166240
Mrs. Iren D. Rayle 325 N. Broadway c/o Small Tract Owners Association Santa Ana, California	0166241
Mima J. Freeman 325 N. Broadway c/o Small Tract Owners Association Santa Ana, California	0166242

Name of Applicant	Serial Number Los Angeles
Roy A. Dixon, Jr. 5910 Deborah Long Beach 15, California	0166243
Minnie R. Ward 4148 Keever Avenue Long Beach 7, California	0166244
Brewer Winton Ward 4148 Keever Avenue Long Beach 7, California	0166245
Fern Dell Ward 4148 Keever Avenue Long Beach 7, California	0166246
Guy B. Coulter 242 St. Joseph Avenue Long Beach 3, California	0166247
Marguerette W. Coulter 242 St. Joseph Avenue Long Beach 3, California	0166248

appeal to Sec
affirmed A-28810
7-12-62

DOCKET FILES

SMALL TRACTS * 2 Applications
* 3 Classification

STATE GRANTS AND SELECTIONS * 2 School Lands

Where lands are classified as suitable for State indemnity selection, the rejection of small tract applications filed after the State application and the allowance of the State selection are proper.

Olaf H. Iverson et al., Sacramento 051057, etc. (December 29, 1960)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento 051057
056068
056215
056216
5.04g

December 29, 1960

Certified Mail
Return Receipt Requested

DECISION

Olaf H. Iverson :
Sherman E. Tucker : Small Tract Applications
Joseph A. Jeans :
Frank D. Jeans :

Decision Affirmed

Messrs. Olaf H. Iverson, Sherman E. Tucker, Joseph A. Jeans, and Frank D. Jeans have appealed from a decision of the Manager dated December 3, 1959, rejecting their applications under the Small Tract Act, as amended, for certain small tracts of land. The decision allowed the State indemnity selection application of the State of California, Sacramento 047731, for certain lands in sec. 34, T. 32 N., R. 6 W., M.D.M., California, including those involved in the small tract applications.

The appellants all urge that the State selection application be rejected as to the lands involved in their small tract applications and that their applications be allowed. They claim that the State will not need or use these lands. Mr. Tucker and Mr. Iverson assert that the State should not be preferred merely because its application was filed prior to the other applications. They request that the lands be re-surveyed and also that the burden be placed upon the State to show that its need for the land is greater than that of the individual applicants.

The records indicate that the State selection application was filed on November 25, 1953, several years prior to the filing of appellants' applications. The application was amended on January 30, 1959, to delete certain lands covered by a reclamation withdrawal, which lands are not involved here. An examination of the lands in issue was conducted by Bureau personnel who found that the lands are suitable for State selection and classified them accordingly.

Concerning the proper classification of the lands, the burden was upon the appellants to show by positive and substantial evidence that the classification adverse to them was erroneous. The mere statements of the appellants unsupported by any evidence are not sufficient. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

There does not appear to be any reason for conducting a re-survey of the lands. Therefore, that request is denied.

Furthermore, as to the argument that the State application should not be preferred over the small tract applications, the Department has pointed out that the Secretary in exercising his discretionary authority to classify the lands, will consider the purpose of the public land laws and also the effect on the public interest. Nelson A. Gerttula, 64 I.D. 225 (1957). In the Gerttula case it was stated that applications "made by the States in exercise of their lieu selection rights should, as a matter of principle, be honored over competing private applications for the same lands, even though the latter may more nearly fit the characteristics of the lands." The case further points out that this principle applies even when the State application is filed subsequent to the conflicting private application. Therefore, that case is much stronger than the present situation where the state application was filed first.

In the circumstances, it appears that allowance of the State selection application and the rejection of the small tract applications were proper, and the decision is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $20.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is:

Division of State Lands
1403 - 12th Street
Sacramento, California

Charles P. Mead

Enclosure

Acting Director

DISTRIBUTION:

Glenn D. Newton, Attorney for Sherman E. Tucker and Olaf H. Iverson (Certified Mail)
Olaf H. Iverson (Certified Mail)
Sherman E. Tucker (Certified Mail)
Frank D. Jeans (Certified Mail)
Joseph A. Jeans (Certified Mail)

Division of State Lands (Reg. Mail)
Lands Staff Officer
Appeals List No. 1
JB

DOCKET FILES

Small Tracts - 2 Classification

It is proper to reject an application for a small tract where the land is part of an isolated tract of public land, and where it is determined to be in the best interest of the public to dispose of the larger tract as a whole.

Ida M. Dahl, Los Angeles 059108 (January 8, 1958)

DOCKET FILES

SMALL TRACTS * 3 Classification

It is proper to reject an application for a small tract where the land is part of an isolated tract of public land, and where it is determined to be in the best interest of the public to dispose of the larger tract as a whole.

Roy W. Geer, Los Angeles 0142108 (January 9, 1961)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0142108
5.04g
January 9, 1961
Certified Mail
Return Receipt Requested

DECISION

Roy W. Geer : Small Tract

Decision Affirmed

Mr. Roy W. Geer has appealed from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated March 30, 1960, rejecting his above-identified application filed under the Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682 et seq.), for the stated reason the land applied for is an isolated tract of public domain land which has no public access.

The records show that the tract applied for comprises 5 acres in the SW$\frac{1}{4}$SW$\frac{1}{4}$, section 12, T. 3 N., R. 4 W., S.B.M., California, and is the only tract applied for in this section. The 5 acre tract is part of a larger body of an isolated tract of public domain land located in section 11 and 12, comprising some 160 acres, lying a short distance north of the West Fork of the Mojave River, and near the town of Hesperia, California. According to a report made in connection with a field examination of the land in question, there is no legal public access to the land. There are a number of crude jeep trails in the area, which appear to be used for mining purposes and not by the general public. There is one paved road which extends to within a short distance of adjoining sections, however, this road is one that has been constructed and is maintained by a private concern and is not subject to use by the general public. The records also reveal that the San Bernardino County Planning Commission has indicated that since the land in question is isolated and without public access from a County maintained highway, building permits would not be obtainable under its zoning restrictions, without proof of public access. In addition to the inaccessibility of the land in question, it has been determined that the topography of the land is rough due to severe drainage disection, which would prohibit and retard the construction and maintenance of a grid road system which would be required if a larger portion of the adjoining and surrounding lands were classified for small tract development. Further, to classify one 5 acre tract for disposition under the small tract act in a larger parcel of public land would tend to disrupt the land pattern and complicate the management of the remainder of the surrounding public land.

The appellant contends in substance that the land he applied for four years ago, is located about one-fourth mile from a paved highway. The appellant claims that the paved highway is no farther away than it was four years ago, although the road has been improved, and the town of Hesperia is extending toward the land. The appellant claims that he has consulted one of the owners of private land located between the land applied for by him and the paved highway, and this person appeared to be cooperative presumably with respect to granting a right-of-way over his land to the land in question.

Under the present policies and procedures of the Department, lack of access alone is not a bar to classifying public land for small tract purposes. However, it appears from the record that it is not feasible or in the public interest to classify the one 5-acre tract for disposition under the small tract act, which is surrounded by a larger or part of a larger body of public land. The Department has consistently held that it is proper to reject small tract applications, where the allowance of one small tract application would result in only partial disposition leaving other portions of adjoining public land undisposed of which are difficult to administer. Cf. Alexander W. Whyte et al., A-27866 (March 31, 1959). Moreover, to classify the land in question for small tract purposes in the circumstances, would not be in conformity with the present policies and procedures relative to coordinating the classification of land for small tract purposes with interested local governmental agencies, particularly where such an agency or agencies are not in favor of such classification.

Accordingly the decision appealed from is affirmed.

Mr. Roy W. Geer is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Roy W. Geer (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

055434 Heidbreder – appeal to Sec
affirmed A-28841
7-26-62

DOCKET FILES

SMALL TRACTS * 3 Classification

CLASSIFICATION * 1 Generally

Small tract applications for lands which are needed by the Bureau in its timber management program, and which are highly valuable for camp sites, picnic grounds, and other public recreational purposes, are properly rejected.

Walter G. Cochran et al., Sacramento 055269 etc., (January 13, 1961)

In reply refer to:

Sacramento 055269 etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 13, 1961

Certified Mail
Return Receipt Requested

DECISION

Walter G. Cochran et al., 1/ : Small Tract Applications

Decision Affirmed

Mr. Walter G. Cochran and 73 other persons have appealed jointly from a decision of the Acting Manager, Sacramento Land Office, dated March 14, 1959, rejecting their applications filed under the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 1958 ed., sec. 682a), for lands in section 34, T. 18 N., R. 9 E., and sections 3 and 10, T. 17 N., R. 9 E., M.D.M., Nevada County, California, for the stated reason that the lands applied for have been classified as improper for disposal for small tract purposes because they are part of a primary timber management unit and continued management of the lands by the Bureau is contemplated. An additional reason given for the rejection of the applications is that considerable time and funds of the Government have been spent to determine the surface rights to mining claims that may be located on the lands in question and adjacent public lands, pursuant to the provisions of the Act of July 23, 1955 (69 Stat. 367), in order to permit proper management of all of the lands for their timber resources.

The appellants contend in substance that one small tract application has already been allowed for land in section 34, T. 18 N., R. 9 E., and a patent has been issued for it by the Bureau, and for this reason they feel that their applications should also be allowed. They also assert that no reasonable investigation was made of the lands as applied for originally by some 120 applicants, and that the person responsible did not make an on the ground examination, but relied on aerial photographs to make his report, and therefore there was no fair appraisal made of the lands. The appellants further contend that to dispose of the lands to them for recreational homesite purposes would be more advantageous to the Government because of the taxes that would be paid and the improvements that would be placed on the lands, than if the lands were retained for grazing and for timber, since very little revenue is derived from grazing permittees, and the lands appear to have been logged off. The appellants also claim that there is no bona fide intention of anyone to mine on the lands, since the lands are not valuable for commercial mining.

1/ The appellants are listed in the attached Appendix A, as well as the serial numbers of their applications.

The contentions of the appellants are without merit. The records show that after the appeals were received in this office, the cases were remanded to the Bureau's State Supervisor for California in order that a more intensive field examination could be made of the lands, and such examination has now been completed. The report of the field examination shows that the lands in question are located about 2 miles from the community of North Columbia, California, in the northern part of Nevada County. The lands are situated on the western edge of the foothills of the Sierra Nevada Mountains, and are adjacent to or in close proximity to the Tahoe National Forest. The lands are in an area which has been made an integral part of the Bureau's Nevada County Forest Management Unit, which contains about 20,800 acres of public lands of which approximately 9,800 are forested with commercial type stands of timber. The lands spplied for by the appellants contain a fairly heavy stand of an estimated 7,657 M.b.f. of merchantable timber, which will yield an annual cut of 115,855 b. f. of timber with an estimated annual sale value of some $2,900. A map and a number of photos contained in the records show the particular tracts of lands covered by the appellants' applications to be access (key) tracts, which furnish access to larger areas of public lands adjoining the subject lands, both inside and outside the Tahoe National Forest. The areas of the lands in section 10, T. 17 N., R. 9 E., are also key access areas for egress and ingress for the public lands in and outside the Tahoe National Forest immediately on the east, and these areas afford access via rough trails and roads to the north bank of Yuba River. The photographs contained in the records also provide good pictorial evidence of the stands of commercial type timber on the lands in question.

In addition to timber management, the area is well suited to extensive recreation with some accompanying intensive use. It provides hunting for deer, bear, pigeon and mountain quail. In conjunction with this, some of the lands are used intensively for camping and picnicking.

South Yuba River passes through this block of land although none of the small tract applications covers land which touches it. This river enhances the recreational value of the area through its availability for fishing.

The lands have both physical and legal access to the public land and lie within one hour's drive from San Francisco Bay area which has a population of about two million, via high-speed freeways and primary highways.

The small tract applications on file block out the public roads through the area thus preventing access to the rest of the area. The Bureau's present recreation access policy is to work out methods to assure access for the public to public lands. It goes without saying that the policy does not contemplate allowing disposal of public land which would block access to other public lands used for or suitable to use for public recreation.

Another of the important multiple uses of the area is as a winter range for deer. Deer in the Sierra Nevada Mountains are migratory, having a summer range in the great expanse of "high country" where ample food, cover and water are available. As winter approaches, these deer are driven down by storms and deep snows to a narrow band of area along the upper foothills, limited on the upper side by snow depth and on the lower side by encroachment of civilization along with its intensive use of the land and its destruction of the deer's natural habitat. Although they remain here for only a few months, the winter range is the factor which limits the population of the Sierra Nevada deer herds and any further depletion of this range will result in serious consequences to that population. In addition, a serious problem of deer depredation orchards and shrubbery will arise as it is common result of winter range depletion elswhere in the State.

The population in California has increased from 10,586,000 , in 1950 to 15,570,000in 1960, an expansion of 50% in ten years. This expansion coupled with increasing leisure which that population enjoys creates an ever-growing pressure on the State's public recreation facilities. It would hardly be proper to diminish the amount of land available for this use when the prospectis for more and more such pressure from the recreation seeking populace.

In view of the above we believe it to be intthe best interests of the public to retain and manage the lands in public ownership in order that the greater number of persons may benefit thereby. This view has consistently been concurred in by the Department in a number of similar cases. Cf. May Jean Cripe et al., Sacramento 058206 etc., (December 17, 1959) (Approved by Assistant Secretary of the Interior, March 1, 1960); Lawrence E. Lowry et al., A-27835 (March 2, 1959); Leroy E. Cassou et al., A-27600 (August 26, 1958). This also conforms to the present general land use policies of the Department.

In the circumstances, the small tract applications involved were properly rejected, and the decision of the Acting Manager is affirmed.

Each appellant listed on the attached appendix is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:

Each Appellant listed in Appendix "A" (Certified Mail)
Hon. John E. Moss, House of Representatives (Regular Mail)
Hon. Clair Engle, United States Senate (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

APPENDIX "A"

Name	Serial Number Sacramento
Walter G. Cochran 3613 Bolivar Avenue North Highlands, California	055269
James A. Cochran 5628 - 2nd Street Rio Linda, California	055272
Ralph E. Street 1601 Bell Street Sacramento 25, California	055323
Richard T. Brown 1825 Neptune Way Sacramento 21, California	055336
Paul Woodward 5420 State Avenue Sacramento 19, California	055337
William T. Burtt, Sr. 1342 Los Robles Boulevard Del Paso Heights, California	055339
Lennard W. Nelson 730 East D. Street Dixon, California	055347
Robert F. Saunders 6220 Larry Way N. Highlands, California	055348
Lee T. Nuzum 2221 "O" Street Sacramento 16, California	055349
Robert T. Vogel P. O. Box 1081 Auburn, California	055350

APPENDIX "A"
(cont.)

Name	Serial Number Sacramento
Howard D. Manley P. O. Box 547 Lincoln, California	055351
Mervyn D. Brown 475 Jay Street (P. O. Box 702) Lincoln, California	055352
Edward Pruss P. O. Box 117 Meadow Vista, California	055353
Thomas E. Watts 7324 Kilborn Drive Fair Oaks, California	055354
Keith M. Ross 1119 Q Street Rio Linda, California	055355
Raymond Vail 4249 Prospect Drive Carmichael, California	055356
Albert B. Green 3729 Bolivar Avenue North Highlands, California	055357
Lloyd L. Rahn 6245 Fairfax Drive North Highlands, California	055358
Mervyn C. Marks 5478 Carlson Drive #12 Sacramento 19, California	055359
Elizabeth D. Elms 1328 Gannon Drive Sacramento 25, California	055360
Florence E. Woodward 5420 State Avenue Sacramento 19, California	055361

APPENDIX "A"
(cont.)

Name	Serial Number Sacramento
Marcella L. Lohmeyer 1325 - 15th Street (Apt. 116) Sacramento, California	0355367
Joe S. Montero 7745 Greenback Lane Citrus Heights, California	055368
Jean D. Saunders 6220 Larry Way North Highlands, California	055375
Richard H. Reinking 4410 Mapel Lane Carmichael, California	055376
Arnold E. Eskel 4523 Ulysses Drive Sacramento 21, California	055377
TaylorLondon 1829 Neptune Way Sacramento 21, California	055382
Kenneth W. Hooker 5930 Sutter Avenue Carmichael, California	055385
Elaine M. Wilson P. O. Box 365 Foresthill, California	055386
Harvey L. Brown Box 202 Foresthill, California	055387
Willard Greenwald 2671 Barbera Way Rancho Cordova, California	055391
Doreen T. Montgomery 4111 Las Cruces Way Sacramento 25, California	055392

APPENDIX "A"
(cont.)

Name	Serial Number Sacramento
Olive E. Newell 411 Buckley Way Del Paso Heights, California	055396
Helen P. McGinnis 2725 Freeport Boulevard Sacramento 18, California	055397
Lee H. Woodward 5420 State Avenue Sacramento, California	055415
August H. Rahn Box 298 Wheatland, California	055431
Ernest R. Joppa 3624 Mahogany Street Del Paso Heights, California	055432
Clarence J. Heidbreder 3024 Walnut Avenue Carmichael, California	055434
Claude Needham 1804 Evergreen Avenue West Sacramento, California	055438
Donald R. Snow 1308 Norfolk Avenue West Sacramento, California	055442
Isaac L. Clover 7600 Heather Road Fair Oaks, California	055443
Clyde E. Needham 1804 Evergreen Avenue West Sacramento, California	055448
Claude G. Needham, Jr. 517 W. Acre Road West Sacramento, California	055449

APPENDIX "A"
(cont.)

Name	Serial Number Sacramento
Evert N. Young P. O. Box 361 Camino, California	055454
Earl A. Deffner 6542 Brock Drive North Highlands, California	055455
Donald K. Clover 3012 California Avenue Carmichael, California	055456
Albert R. Payne 6548 Fountain Lane North Highlands, California	055458
Richard W. Martin 7010 Chris Avenue Florin, California	055464
Mildred E. Magan 2630 Land Park Drive Sacramento 18, California	055466
William H. Ansman 5051 - 50th Avenue Sacramento, California	055467
Isadore I. Levine 5420 Bradford Drive Sacramento, California	055492
Floyd Green 5200 Marconi Avenue Carmichael, California	055575
Fred C. Gimeson 1957 Middleberry Road North Sacramento 15, California	055593

APPENDIX "A"
(cont.)

Name	Serial Number Sacramento
Emil F. Malek 4660 Fair Oaks Boulevard Sacramento 25, California	055594
George W. Story 2953 Leta Lane Sacramento 21, California	055595
Madeline E. Cassidy 4802 Brand Way Sacramento 19, California	055596
Craig H. Zentner 3611 Pope Avenue Sacramento, California	055598
Mrs. Melvin R. Beach 4816 Boyd Drive Carmichael, California	055621
Darwin Dailey Rt. 2, Box 2626 Loomis, California	055624
Ferdinand A. Jorgensen 107 East Elverta Road Elverta, California	055625
Timothy A. Brown Rt. 2, Box 2626 Loomis, California	055626
Henry O. McAuley Rt. 2, Box 2626 Loomis, California	055627
James P. Jorgensen, Jr. Rt. 4, Box 4360 Rio Linda, California	055644
Sheldon D. Holland Rt. 2, Box 2626 Loomis, California	055669
Jackie Allen 1904 Magnolia Avenue Manhattan Beach, California	055710

APPENDIX "A"
(cont.)

Name	Serial Number Sacramento
Robert D. Reynolds 3200 Highland Avenue Santa Monica, California	055711
Reginald J. Irvine 7131 Sunset Avenue Fair Oaks, California	055727
Dave E. Cordano 2730 -65th Street Sacramento, California	055731
Walter H. Haupt 3901 Berrendo Drive Sacramento 25, California	055735
Julia A. Balcom 7906 Rusch Drive Citrus Heights, California	058362
Leroy E. Coppin 3945 Dayton Street Del Paso Heights, California	058433
Robert J. Stilwell 518 Eleanor Avenue North Sacramento 15,California	058434
Victor C. Wacker 3624 M. Street North Highlands, California	058438

DOCKET FILES

SMALL TRACTS * 3 Classification

It is proper to reject applications for small tracts for lands which are unsuitable for small tract purposes where it is determined not to be in the public interest to classify the lands for such purposes.

Frank Harlan Shippee, Los Angeles 0147496 (January 25, 1961)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0147496
5.04g

January 25, 1961
Certified Mail
Return Receipt Requested

DECISION

Frank Harlan Shippee	:	Small Tract Application

Decision Affirmed as Modified

Mr. Frank Harlan Shippee has appealed from a decision of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated April 28, 1960, rejecting his above-identified application filed under the Small Tract Act, as amended, (43 U.S.C., 1958 ed., sec. 682a), for the stated reason that the lands applied for are dissected by live washes, or are situated on rough, rocky, mountainous terrain, rendering them unsuitable for small tract use.

A report of field examination made in connection with the lands applied for, which comprise a 5 acre tract in sec. 32, T. 1 N., R. 5 E., SBM, shows the lands to be located on the rough, rocky slopes of the eastern end of the San Bernardino Mountains, and approximately 1.5 miles west from the town of Yucca Valley, California. The lands are inaccessible except by foot.

The appellant contends in substance that he has staked out the tract of land sought by him, and that it is located on a saddleback, contains few rocks, and has an adequate building site. The appellant also asserts that he has acquired permission for a road right-of-way along the boundary of privately owned land adjacent to the lands applied for that will give him access to within 900 feet of a paved road. The appellant further claims that other small tractslocated on the same mountain side have been successfully developed, and suggests that his small tract be reclassified.

It appears from the record that all of section 32, in which the tract in question is located, has been classified as unsuitable for small tract development because of its adverse topography, and inaccessability. In this respect it has been held that it is not in the public interest to classify one small tract of land in the midst of a larger body of public land which is too rough and mountainous for small tract purposes, even though the small tract sought is suitable for small tract purposes, which in this case the appellant has not definitely shown. Cf. Richard W. Greenman, A-28044 (October 9, 1959). This is also in conformity with the present policies and procedures of the Department, which provide that no public land will be classified for small tract purposes where such classification will create isolated or scattered types of settlement, and therefore not in the public interest.

Accordingly, the decision appealed from is affirmed as herein modified.

Mr. Harlan Shippee is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Director

DISTRIBUTION:

Mr. Frank Harlan Shippee (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec
affirmed A-29087 (Ltr Dec)
4-29-63

DOCKET

SMALL TRACTS * 3 Classification

The rejection of a small tract application for rough, rocky and mountainous land will be affirmed where the record shows there is available for lease in the same section, township and range, public land which is more suitable to small tract development and which has been classified for such development.

Ilot Johnson, Los Angeles 0114870 (January 25, 1961)

In reply refer to:
Los Angeles 0114870
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

January 25, 1961

Certified Mail
Return Receipt Requested

DECISION

Ilot Johnson : Small Tract Application
:
:
:
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:
: Decision Affirmed

Mr. Ilot Johnson has appealed from a decision of the Chief, Lands Adjudication Section, Los Angeles Land Office, dated April 5, 1960, rejecting his above-identified small tract application for the stated reason that the lands applied for are dissected by live washes, or are situated on rough, rocky, mountainous terrain, rendering them unsuitable for small tract use.

The report of field examination made in connection with the land applied for, a 5-acre tract in section 9, T. 5 N., R. 2 W., SBM, shows the land to be located in a rough, rocky, mountainous area bordering on Apple Valley, and some 9 miles from the town of Apple Valley, California. Access to the land is very difficult because of the rough topography

The appellant contends in substance that the land is ideally suited for recreation, and it is his intention to construct a cabin on the land for summer vacation use. The appellant also contends in substance that there are no live washes of any extent on the land, and that there are only a few piles of loose rocks in the principal washes which have been there for several years without being washed away. The appellant also claims that a large portion of the tract applied for is flat, rolling, has adequate access, and is otherwise suitable for the purpose for which he desires to use it.

It appears from the records, that the larger portion of the area, including the land applied for, in section 9, is extremely steep and rough, and unsuitable for small tract development because of its adverse topography and inaccessibility.

Rough topography or lack of access would not in themselves constitute a bar to classifying public land for small tract purposes. In the instant case, however, it has been determined that it is not in the public interest to classify the land for small tract purposes because the Bureau has selected other, more suitable tracts of public land in the same area for small tract development. There are some 60 acres of land classified for small tract use within the section in which the lands applied for are located.

To classify additional lands that are not as suitable for small tract purposes would or could result in fragments of land that would likely remain undeveloped. Criteria for classifying public lands for small tract purposes include provision that lands will not be classified as suitable for small tract purposes if such classification would conflict with community or area plans of development, or where such classification would lead to only partial or piecemeal disposal of an area suitable for and capable of transfer from Federal ownership. Moreover, the Secretary of the Interior in the administration of the Small Tract Act must promote the beneficial utilization of the public lands, subject to the terms thereof, and at the same time safeguard the public interest, in the lands. 43 CFR 1959 Supp., 257.2(a). The refusal to classify the land in question for disposal as applied for is in conformity with the present policies of the Department, and is, therefore, proper.

Accordingly, the decision appealed from is affirmed.

Mr. Ilot Johnson is allowed the right of appeal tomthe Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee is $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Ilot Johnson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

appeal to Sec
affirmed A-28838 9-17-62

DOCKET FILES

SMALL TRACT * 2 Application

* 3 Classification

The width of a right of way reserved along the boundary of a small tract may be increased by the Secretary of the Interior, or his delegate, at any time prior to the allowance of a small tract application for the land involved.

James Amos Nelson, Los Angeles 0116057 (January 27, 1961)

In reply refer to:
Los Angeles 0116057
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 27, 1961

Certified Mail
Return Receipt Requested

DECISION

James Amos Nelson : Small Tract Application
:
:
:

Decision Affirmed

James Amos Nelson has appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated June 24, 1960, which modified its previous decision of June 12, 1959. The latter decision reserved an easement and right- of-way 40 feet wide along the north boundaries of subject land. The decision of June 24, 1960, modified the origional decision only to the extent of enlarging the reservation of the easement and right-of-way along the north boundary of subject land to a width of 125 feet for a proposed new freeway. It is this modification from which the appellant appeals.

The record shows that appellant filed his small tract application on May 24, 1954, for the $W\frac{1}{2}$ $NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, Sec. 12 T. 3 N., R. 3 E., S.B.M. California containing 5 acres, including subject land, were classified for dispostion under the Small Tract Act of June 1, 1938.

In compliance with the classification order, the authorized officer determined that the individual tracts embraced 2.5 acres and specifically designation the width of rights-of-way reserved from each tract. However, on May 28, 1959 the authorized officer, among other things, amended his designation to reserve an easement and right-of-way 125 feet wide extending along the north boundary of the tract, including lands in other sections for several miles for a proposed freeway. The decision of June 24, 1960, was in compliance with the amended determination

The appellant does not contend that the decision is in error but states that he would like to keep the full 2.5 acres to settle on for family health reasons.

The Small Tract Act, as amended (43 U.S.C. 1958 ed., sec. 682a) provides that the Secretary of the Interior, in his discretion, may classify public land (in certain categories) as chiefly valuable for various kinds of small tract sites not to exceed 5 acres, for sale or lease under such rules and regulations as he may prescribe. In the exercise of such authority it is clear that the terms and conditions of sale or lease of such tracts may be amended by him, or his delegate, anytime prior to the allowance of the small tract application. Furthermore, a classification for small tracts may specify the width of rights-of-way along the boundaries of each tract for street, road and public utility purposes, as departmental regulations provide that where the width of rights-of-way reserved for such purposes is not stated, the rights-of-way will be 50 feet along the boundaries of the tract. (43CFR 257.17(b) 1959 Supp.)

In the instant case the amended classification prior to the decision of June 12, 1959, provided for 33 feet right-of-way along the boundaries of the tract involved with the exception of the north boundary which is 125 feet wide.

The Department has held that the filing of a small tract application does not vest in the applicant any legal right or interest in the land described in his application. Cf. Burton C. Corwin et al., A-28048 (October 30, 1959). The filing of an application to purchase or lease gives the appellant nothing more than the right to have the application considered under the terms and conditions prescribed for the sale or lease of the tract involved.

Accordingly, the decision appealed from is affirmed.

Mr. Nelson is allowed 30 days from the date of receipt hereof within which to inform this office whether he desires his appliction to be further processed, failing in which the case will be closed without further notice to him; or to appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:

Mr. James Amos Nelson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

87402-61

DOCKET FILES

SMALL TRACT * 2 Application
* 6 Sales
RULES OF PRACTICE * 11 Statement of Grounds

An application to purchase a small tract as a residential site is properly rejected where the lessee has made no attempt to construct improvements on the land.

An appeal is subject to dismissal when an appellant fails to allege any error in the decision appealed from.

George E. Paul, Los Angeles 095294 (January 31, 1961)

In reply refer to:
Los Angeles 095294
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

January 31, 1961

Certified Mail
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DECISION

George E. Paul : Small Tract Purchase Application

Appeal Dismissed

George E. Paul has appealed from the decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated June 17, 1960, rejecting his application to purchase the land embraced in his small tract lease.for the reason that he had failed to construct improvements as required by the regulations.

The record shows that a lease for the tract containing an option to purchase was issued to the appellant effective May 26, 1952, for a term of three years, pursuant to the Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 1958 ed., 682a), as amended, for the purpose of constructing a residence thereon. Under the lease terms, the lessee specifically agreed to construct substantial improvements appropriate for use and occupancy of the lands.

In his offer to lease the appellant states specifically that if the lease is issued he will construct a "dwelling as per required specifications".

The record further shows the appellant filed a purchase application for the land May 23, 1955, stating that no construction improvements had been placed on the land. Subsequently a field examination revealed that there were no construction improvements on the land.

In his appeal, the appellant asserts, in substance, that he lives in Illinois and went to the Los Angeles Land Office in July 1956 for the express purpose of completing details to purchase the tract. At that time he was informed that his file was closed and the land would be put up for a drawing to be held later. He felt his chances in the drawing would be slim so he did nothing further. However, he fails to point out wherein the decision appealed from is erroneous.

Departmental regulation 43 CFR, 1959 Supp., 257.13(a) provides in pertinent part:" *** The option to purchase clause will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract ***provided the improvement required by the lease have been made, ***".

The appellant has made no attempt to construct or have constructed improvements on the land. A small tract lessee is not entitled to purchase the leased land when he has failed to construct improvements on the leased tract as required by the terms of his lease and departmental regulations. See Joseph M. Czaplinski , A-27492 (November 15, 1957; Jimmie L. Sellars, A-28072 (October 26, 1959).

As the appeal presents no issue as to the propriety of the Land Office decision, that decision is affirmed and the appeal is dismissed.

George E. Paul is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Turn

Enclosure

DISTRIBUTION:

George E. Paul (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RLE

DOCKET FILE

SMALL TRACTS * 2 Applications

* 3 Classification

The mere filing of a small tract application does not create any present right in the land in the applicant.

It is proper to reject applications for land for small tract purposes, where it is determined that it is not in the public interest to do so.

Henry Spicer Williams et al., Los Angeles 0143228 etc. (February 2, 1961)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0143228 etc.,
5.04g

February 2, 1961

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Return Receipt Requested

DECISION

Henry Spicer Williams et al., : Small Tract Applications

Decision Affirmed as Modified

Mr. Henry Spicer Williams and other persons 1/ have appealed from decisions of the Chief, Land Adjudication Unit, Los Angeles Land Office, dated April 13, 1960, rejecting their applications filed under the Small Tract Act, as amended, (43 U.S.C. 1958 ed., sec. 682a), for the stated reason that the lands applied for are dissected by live washes, or are situated on rough, rocky, mountainous terrain, rendering them unsuitable for small tract use.

A report of field examination made in connection with the applications filed for the lands, which comprise Lot 14, Sec. 29, T. 11 S., R. 1 W., SBM. shows the lands to be located on the steep, rough and mountainous slope bordering the Rineon Del Diablo Valley, approximately 3 miles northeast of the town Escondido, and 35 miles from San Diego, California. The field report also indicates that the lands are generally without water for domestic use, and are inaccessible because of dense brush and lack of public access.

The appellants contend in substance in a consolidated appeal filed by them that they have thoroughly inspected the lands applied for, and have determined that they are suitable and ideal for the purposes for which they desire them. The appellants also assert that they have made several trips to the lands in order to plan roadways, etc., claiming that they fully understood that the tracts would be leased to them, with the option of purchasing them at a later date as provided for by the applicable law. The appellants also assert that the small tracts being offered at public auction in other parts of California, of which they were apprised of in the decision appealed from, consist of

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1/ The names of the other appellants, and the corresponding serial numbers of their cases are: William Beers, Los Angeles 0143230
Harold B. Bell, Los Angeles 0143229
Raymond G. Buergin, Los Angeles 0143233
Urban J. Liewer, Los Angeles 0143234,
James Beers, Jr., Los Angeles 0143262

worthless, waterless, arid desert lands, unfit for filing under the Homestead or Desert Land Acts, and unsuitable for the purposes for which they desire small tracts, and in comparison, the lands applied for by them afford them a good view, a promise of water, electricity is available, and the lands are livable with an ideal climate the year around. The appellants conclude by claiming that they are war veterans and entitled to select and "prove up" on tracts of public lands that they like, and it is the duty of the Bureau to grant them the right to select such tracts of public lands.

The contentions of the appellants are without merit. To begin with it must be stated that the appellants are not entitled as a matter of right to the land for which they have applied. Under the applicable statute and regulations relating to small tract applications, the Secretary of the Interior is authorized in his discretion, to sell or lease a tract not exceeding 5 acres of public lands which he "may" classify as chiefly valuable for residence, recreation, business or community site purposes. Accordingly, the Secretary is not required to lease or sell any public land, but if he does so, he must find that the lands are chiefly valuable for the purpose for which applicants seek to acqui them. Cf. Burton C. Corwin et al., A-28048 (October 30, 1959). The mere filing of an application in compliance with the regulations of the Department does not vest in an applicant any legal right or interest in the land described in the application. Miles W. Payne, A-28030 (August 17, 1959); Joseph E. Hatch, 55 I.D. 580 (1936). This ruling applies to veterans as well as nonveterans.

The group of small tract applications under consideration cover an entire isolated tract (a lot containing approximately 39 acres). The isolated tract is located up a mountain canyon, approximately three-fourths mile from the closest improved road. Public access does not appear to be available. While the entire subdivision is under application, the Bureau has no way of knowing how many of the applicants will not wish to purchase their tracts after being advised of the sale price. If they did not all purchase, and based on past experience this could well happen, the Bureau would be left with unmanageable fragments of public domain. Moreover, this tract, while regular in shape, is a 39-acre lot. Sale to the applicants would require a supplemental plat to properly describe the land, and probably a contour type subdivision survey to properly provide for rights-of-way, and protect against undue erosion caused by unnecessarily steep roads. Therefore, it would not be in the public interest to classify the land in question for small tract purposes.

Accordingly, the decision appealed from is affirmed as herein modified.

All of the appellants named herein are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved. In taking an appeal there must be strict compliance with the regulations.

A. H. Tiow

For the Director

Enclosure
Distribution on page 3

DISTRIBUTION:

Each Appellant as shown herein (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

DOCKET FILES

RULES OF PRACTICE * 10 Standing to Appeal

ST

Where an appeal is filed by a person acting as attorney for the appellant without a showing that he has been formally admitted to practice before the Department, or admitted to practice before the courts of any State, Territory, or the District of Columbia, or that he is appealing on behalf of a member of his family, the person signing for the appellant is not authorized to practice merely because he has a power of attorney, and the appeal must be dismissed.

Lawrence Roy Schultek et al., Los Angeles 0157852, etc. (February 6, 1961)

In reply refer to:
Los Angeles 0157852 etc.[1]
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 6, 1961

Certified Mail
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DECISION

Lawrence Roy Schultek et al. : Small Tract Applications

Appeals Dismissed

Mr. John T. Hayes has filed an appeal on behalf of Mr. Lawrence Roy Schultek and 6 other persons [1] from separate decisions of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated June 8, 1960, rejecting the seven applications referred to which were filed under the Small Tract Act, as amended, (43 U.S.C., 1958 ed., sec. 682a), for the stated reasons that because only seven applications were filed for small tracts in the area, their allowance would not be in the public interest, would tend to disrupt the land pattern of the public domain, and would place an administrative burden on the Bureau. The applications were also rejected for the additional reason that the lands are not suitable for small tract development because of the rough topography.

It appears from the record that Mr. Hayes was acting on behalf of the appellants under a purported power of attorney in fact, which named him and Mr. Wilfred F. MacDonald as representatives of all the appellants, in matters pertaining to their small tract applications. [2]

The records do not show that Mr. Hayes is an attorney formally admitted to practice before the Department, or admitted to practice before the courts of any State, Territory, or the District of Columbia, or that such person was appealing on behalf of any of the appellants as a member of his family.

---

[1] The names of the other appellants and the serial numbers of their respectie cases are as follows: Henry Marvin Lunde, Los Angeles 0157854; June Arline Fleming, 0157855; Kurt Albert Durst, 0157856; Wilfred Fraser MacDonald, 0157857; Clarence Thomas Boyle, 0157953; Jeanne Hazard Hayes, 0157972.

[2] The name of Mr. Axel Emil Berndes, Los Angeles 0157858 was listed on the notice of appeal in error, since his case is not concerned in the appeals in the instant cases.

Consequently, by letter dated November 4, 1960, Mr. Hayes was requested to furnish within 30 days from the receipt thereof, a showing that he was eligible to conduct the appeal on behalf of all of the persons listed in the notice of appeal, either as an attorney or as a member of the family, Mr. Hayes was also notified that if this information was not submitted as required, the appeal was subject to summary dismissal, as a power of attorney does not qualify a person to act on behalf of other persons in such cases. No reply has been received from Mr. Hayes in regard to this matter. However, a letter dated November 30, 1960, and transmitted to this office within the 30 days specified in the letter to Mr. Hayes, has been received from Mr. Wilfred F. MacDonald, in which he indicates that the appellants are acting as a limited partnership, and unity of action and intent is obvious from the very existence of the power of attorney. Mr. MacDonald further indicates in his letter that the power of attorney was signed upon advice from the Los Angeles Land Office.

Mr. John T. Hayes is the only person signing the notice of appeal on behalf of all of the appellants concerned, including Mr. MacDonald. Mr. Hayes has not submitted any showing that he is in any way eligible to represent any of the appellants involved, either as an attorney or as a member of a family. Nor can he be considered to be acting in the capacity of a member of a limited partnership as intimated by Mr. MacDonald, as the group of appellants cannot be, in this case, considered such a legal entity.

It has been consistently ruled by the Department that where an appeal is signed by a person other than the appellant, that person must be in one of the categories of persons mentioned above authorized to practice before the Department. The person signing for the appellant is not authorized to practice merely because he has a power of attorney. In such cases the appeal must be dismissed. Cf. Lily L. Pearson et al., A-27505 (November 15, 1957); Hattie M. Fults, Ernest Maloof, A-27509 (November 19, 1957).

Accordingly, the appeal in the instant cases is dismissed.

Each appellant named herein is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

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DISTRIBUTION:

Mr. John T. Hayes (Certified Mail)
Mr. Lawrence Roy Schultek (Certified Mail)
Mr. Henry Marvin Lunde (Certified Mail)
Mrs. June Arline Fleming (Certified Mail)
Mr. Kurt Albert Durst (Certified Mail)
Mr. Wilfred Fraser MacDonald (Certified Mail)
Mr. Clarence Thomas Boyle (Certified Mail)
Miss Jeanne Hazard Hayes (Certified Mail)
Hon. Bob Wilson, House of Representatives
Lands Staff Officer
Appeals List No. 1
RBO

LA 0129866 - appeal to be affirmed Ltr Dec. A-29042 6-12-63

In reply refer to:

Sacramento 057260, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DOCKET FILES

February 21, 1961

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DECISION

Thelma A. Buchanan *et al.** : Small Tract

Decisions Affirmed

The following cases before this office on appeal from the land office decisions shown, have been reviewed, and the decisions appealed from have been found to be correct. A change in the appraised price fixed for purchase of a small tract is not warranted where no error is apparent on the face of the record and the applicant fails to present substantial and positive evidence to establish that the appraisal is erroneous. Further, with respect to the appeal of Mr. Robb, it is stated that lands may be classified as suitable for disposition by direct sale under the Small Tract Act in the discretion of the authorized officer. No error in the determination for direct sale has been demonstrated. The appellants have not presented evidence on appeal which would require a change in the decisions appealed from. The decisions are therefore affirmed.

*Appellant	Serial No. of Case	Date of Decision Appealed from
Mrs. Thelma A. Buchanan	Sacramento 057260	October 17, 1960
Lawrence Edward Robb	Los Angeles 0138277	January 4, 1961
Elwin Ray Helm	Los Angeles 0139051	November 2, 1960
Albert Leon Goldsmith	Los Angeles 0129866	October 24, 1960
Mrs. Naomi Gertrude Tresner	Los Angeles 0129867	October 24, 1960

Each appellant listed above is allowed the right of appeal herefrom to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. A $5.00 filing fee is required with each appeal which is taken. In taking an appeal there must be strict compliance with the rules of practice.

A. H. Kerr
Appeals Officer

Enclosure

DISTRIBUTION:

Each appellant listed above
Mr. Hugh Kenneth Forsman, Attorney for Mrs. Buchanan (Sacra. 057260)
Hon. Thomas A. Kuchel, United States Senate
Area Administrator, Area 1
SS (Sacramento)
Asst. to SS (Los Angeles)
LO (Sacramento)
LO (Los Angeles)
Lands Staff Officer
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AO Reading File
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DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0138263
5.04g

February 27, 1961

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DECISION

Wert Rhea Cope : Small Tract Application

Case Remanded

Mr. Wert Rhea Cope has appealed from a decision of the Chief, Lands Adjudication Unit, Los Angeles Land Office, dated April 4, 1960, rejecting his above-identified application filed under the Act of June 1, 1938, as amended (43 U.S.C. 1958 ed., sec. 682a), for the stated reason that the lands sought are dissected by live washes or are situated on rough, rocky, mountainous terrain, rendering the lands unsuitable for small tract use.

The application had been previously rejected by the Manager of the Los Angeles land Office on February 9, 1956, for the same reason. An appeal was taken from that decision to this office, and upon consideration of the showing made and study of a topographic map it appeared that the land sought by the appellant may have sufficient non-mountainous terrain suitable for small tract classification. Accordingly, the application, and certain other applications for small tracts in the same section, were remanded by our decision of December 5, 1957, for further examination of the lands in each application with a view to proper classification of the lands and appropriate action on each application.

A further field examination was made on August 19, 1959, and the report thereof states, with respect to the lands applied for by Mr. Cope, that the ground is strewn with large boulders, and particularly the rough terrain, live washes, and inaccessability make the lands generally unsuitable for a small tract building site.

The appellant contends that he is thoroughly familiar with the lands and considers them suitable for the purposes for which he filed for them under the small tract act. He also asserts that it would not be adverse to the public interest for the Bureau to dispose of the lands to him. The appellant concludes in substance that there is sufficient level land in the tract sought by him upon which to build a suitable home, and that the location of the tract in the desert would be beneficial to a serious asthma condition that he now has.

There is nothing in the record to indicate that disposal of the tract in question would be adverse to the basic policies expressed in the departmental regulations, 43 CFR 257.2, in that such disposal (1) would not lead to private control of resources needed for public use, or (2) disposal would create an isolated or scattered settlement which would impose a heavy burden on State or local governments. In fact, due to the location of the tract in a narrow band of vacant public domain between the valley floor and a school section, disposal of the land would improve the land pattern. It is recommended that the appellant be allowed to purchase the tract at its fair maket value, even though it may be by general standards marginal or submarginal for a homesite with the knowledge that there is a possibility that development of the tract may be expensive, and may even be prevented by the County Planning Commission of San Bernardino County, which has recommended against classifying the tract for small tract purposes.

Accordingly, the decision rejecting the application of the appellant is reversed and the case remanded to the Assistant to the State Supervisor for California at Los Angeles for appropriate classification action and allowance of the application, all else being regular.

A. H. Furr

Appeals Officer

DISTRIBUTION:

Mr. Wert Rhea Cope (Regular Mail)
Asst. to State Supervisor, Los Angeles w/case record Los Angeles 013263
Lands Staff Officer
Appeals List No. 1
RBO

a

appeal to Sec

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In

In reply refer to:
affirmed. Ltr Dec.
Sacramento 061996
5.04g
A-29005
5-13-63

Certified Mail
Return Receipt Requested

DECISION

March 15, 1961

Oscar J. Berghagen : Small Tract Application

Manager's Decision Affirmed

Mr. Oscar J. Berghagen has appealed from the decision of the Manager dated July 1, 1960, rejecting his small tract application for the N½NE¼NW¼NE¼ sec. 16, T. 31 N., R. 5 W., M.D.M., California, for the reason that the lands are proper for retention in Federal ownership and are unsuitable for small tract classification because of rough topography requiring complex subdivisional survey and planning. 1/

The appellant claims that he checked the tract carefully before filing his application and found two very good homesites on it, that the tract is not of rough terrain, that a nicely developed 5-acre homesite adjoining it is of the same type of land, and that there is a paved road and electricity to the corner of the tract. He states that he has been told that a tract of 155 acres, including the lands he applied for, was going to be sold as one unit, and, therefore, he contends that his application was rejected unfairly because of the unsuitability of other lands involved in the larger tract.

The reasons stated by the Manager for rejecting the small tract application are proper. Lawrence E. Lowry et al., A-27935 (March 2, 1959). The appellant has the burden of showing by positive and substantial evidence that this adverse classification is erroneous. David C. Bintliff & Co., Inc., A-28274 (July 13, 1960). His mere assertions, unsupported by any evidence, are insufficient and do not sustain this burden. Mary Refugio Jackson et al., A-27236, A-27237 (February 29, 1956). Therefore, the decision must be and is affirmed.

1/ Four other small tract applications for lands in the NE¼ of that section were also rejected in the same decision for the same reason

Mr. Oscar J. Berghagen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

A. H. Fran

Appeals Officer

Enclosure

DISTRIBUTION:

Mr. Oscar J. Berghagen (Certified Mail)
Lands Staff Officer
AA-1
SS (California)
LO (Sacramento)
Case File
Permanent File
Attorney's Reading File
AO Reading File
JB

058740 appeal to Sec Index 7-13-61
059394 affirmed A-28992-2-28-62

056062

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Alaska Contest No. 684 etc.
affirmed, A-28934—05894
4-26-62

DEPT. OF INTERIOR
SACRAMENTO, CAL.

APR 17 10 00 AM 1961

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LAND MANAGEMENT
LAND OFFICE

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DECISION

March 16, 1961

James C. Oehring et al. 1/	:	Homestead Contest, Desert Land,
	:	Private Exchange, and Small Tract
	:	Applications

Appeals Dismissed

The following noted appeals are hereby summarily dismissed for the reasons shown below.

Each person listed under Appendix "A" has failed to file a statement of reasons in support of his appeal, and the time for filing the statement in each case has expired (43 CFR 221.3).

Each person listed under Appendix "B" has either filed a statement of reasons in support of his appeal or has requested an extension of time within which to file a statement of reasons; however, the statement of reasons or the requests for extensions of time were filed late, having been transmitted to this office after the expiration of the time allowed, and such delay cannot be waived (43 CFR 221.3, 221.9 (b), and 221.97 (c)).

The dismissal of the appeals for failure to comply with the requirements of the above-cited regulations is mandatory (43 CFR 221.98).

Each appellant listed on the attached appendices is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application or claim involved in the appeal. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by James C. Oehring, the adverse party to be served by him is:

Mr. Jack L. Dewey
Box 61
College, Alaska

A. H. Fim
Appeals Officer

Enclosure

1/ The names of the appellants, the serial numbers of their applications, and other pertinent data are shown on the attached appendices.

DISTRIBUTION:

Each Appellant (Certified Mail)
Hon. George P. Miller, House of Representatives
Hon. Clair Engle, United States Senate
Hon. Thomas H. Kuchel, United States Senate
Hon. D. S. Saund, House of Representatives
Hon. Harlan Hagen, House of Representatives
Mr. Jack L. Dewey (Regular Mail)
Area Administrator, Area 1
Area Administrator, Area 2
Area Administrator, Area 4
OS (Fairbanks)
LO (Fairbanks)
SS (California)
LO (Sacramento)
Asst. to the SS (Los Angeles)
LO (Los Angeles)
SS (Nevada)
LO (Reno)
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Case Files
Permanent Files
Attorney's Reading File
AO Reading File
RBO

APPENDIX "A"

Appellant	Serial Number of Application	Date Notice of Appeal Filed
James C. Oehring (Contestant)	Contest No. 684	December 7, 1960
Julia Mae Moore	Los Angeles 0164519	September 9, 1960
Carl J. Johnson	Nevada 056472	January 16, 1961
Barbara Carole Hickson	Nevada 056473	January 16, 1961
Nora L. Johnson	Nevada 056474	January 16, 1961
Lawrence T. Stewart Returned 619	Sacramento 051961 ✓✓	December 12, 1960
Benjamine P. Stewart	Sacramento 052000 ✓✓	December 12, 1960
Melvin E. Taylor	Sacramento 056566 ✓✗	January 20, 1961
H. Don McClure	Sacramento 056567 ✓✗	January 24, 1960
Charles E. Howell	Sacramento 056740 ✓✗	January 18, 1961
Charles W. Ouilette, Sr.	Sacramento 059539 ✓✗	January 23, 1961
Dorothy L. Ouilette	Sacramento 059541 ✓✗	January 23, 1961
Wilma A. Mankins	Sacramento 059658 ✓✗	January 16, 1961
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
George S. Schimmel	Sacramento 059964 ✓✗	January 23, 1961
Kathryn L. Plummer	Sacramento 060785 ✓✗	January 17, 1961
Eugene D. Englund	Sacramento 060192 ✓✗	January 23, 1961
Phyllis E. Hanson	Sacramento 060805 ✓✗	January 24, 1961
Mary Lou Hutchinson	Sacramento 060824 ✓✗	January 19, 1961
Matilda M. Soares	Sacramento 060826 ✓✗	January 24, 1961
Joseph A. Soares	Sacramento 060827 ✓✗	January 24, 1961

(Appendix "A" cont.)

Ella F. Hanson	Sacramento 061369 ✓	January 19, 1961
Norris A. Hanson	Sacramento 061370 ✓	January 19, 1961
Rosie De La Fuente	Sacramento 061458 ✓	January 19, 1961
Homer A. Given	Sacramento 061464 ✓	January 19, 1961
Ray Weber	Sacramento 061465 ✓	January 23, 1961

APPENDIX "B"

Appellant	Serial Number of Application	Date of Filing Notice of Appeal	Date Statement of Reasons Transmitted (Postmarked)
Rita Rizzardini	Sacramento 056062	January 23, 1961	March 1, 1961
Hazel D. Myers	Sacramento 056219	January 16, 1961	February 26, 1961
George Hallett	Sacramento 058582	January 16, 1961	February 24, 1961
Mary E. Hallett	Sacramento 058583	January 16, 1961	February 24, 1961
Geraldine G. Barone	Sacramento 058740	January 17, 1961	March 1, 1961
Edwin F. Parker	Sacramento 059394	January 16, 1961	February 20, 1961
uis Elmer Larson	Sacramento 059826	January 18, 1961	February 20, 1961
Fredereck C. Olberg	Sacramento 059828	January 17, 1961	February 22, 1961
William J. Switzenberg, Jr.	Sacramento 059847	January 18, 1961	February 28, 1961
Francis G. McGuire	Sacramento 059850	January 20, 1961	February 21, 1961
Albert B. Christman	Sacramento 059855	January 17, 1961	February 20, 1961
Raymond M. Nelson	Sacramento 059856	January 18, 1961	February 20, 1961
Roland E. Baker	Sacramento 059959	January 18, 1961	February 27, 1961
Ella E. Pierce	Sacramento 059861	January 18, 1961	February 21, 1961
Charles Henry Mills	Sacramento 060018	January 18, 1961	February 21, 1961
Walter Roberts	Sacramento 061365	January 20, 1961	March 6, 1961
Julius Goller	Sacramento 060237	January 17, 1961	February 27, 1961
Enoth L. Osborn	Sacramento 060783	January 16, 1961	February 21, 1961
Charles O. Plummer	Sacramento 060786	January 17, 1961	February 28, 1961
Irwin H. Hutchinson	Sacramento 060825	January 19, 1961	March 4, 1961
Stanley E. Werre	Sacramento 061364	January 19, 1961	February 25, 1961
Warren A. Strong	Sacramento 061373	January 20, 1961	February 23, 1961
Lora G. Osborn	Sacramento 061379	January 16, 1961	February 20, 1961
Dolphin W. Hargis	Sacramento 061454	January 18, 1961	February 27, 1961

(Appendix "B" cont.)

Lila L. Shively	Sacramento 061375	January 19, 1961	February 24, 196
Virgil H. Kingling	Sacramento 061462	January 20, 1961	March 7, 1961
Eva M. Hoch	Sacramento 061471	January 23, 1961	March 1, 1961
Walter G. Hoch	Sacramento 061472	January 23, 1961	March 1, 1961
Desert Cove Properties Inc.	Los Angeles 0153145 0153638	September 27, 1960 " " "	November 3, 1960 " " "
Otto Fred Opperman	Los Angeles 0156045	September 19, 1960	October 20, 1960
Melvyn M. Stephens	Los Angeles 0166144	September 15, 1960	October 21, 1960
Edward D. Lewis	Los Angeles 0166678	September 27, 1960	November 3, 1960
Newville, Koenig & Associates, Inc.	Los Angeles 0152854	September 27, 1960	November 3, 1960

RECEIVED
APR 17 1961
BUR. OF LAND MGMT.
STATE OFFICE
SACRAMENTO, CALIF.

LO

DEPT. OF INTERIOR
SACRAMENTO, CAL.
APR 7 2 27 PM 1961
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Sacramento 059860
5.04g
Small Tract Application

MAR 31 1961

Mrs. Irene D. McCaw
308-B Monterey
China Lake, California

Date Land Office decision rendered: **December 20, 1960**
Decision served: **December 24, 1960**
Appeal filed: **January 27, 1961**
Envelope containing appeal postmarked: **January 25, 1961**
Filing fee paid: **January 27, 1961**

Dear Mrs. McCaw:

Your appeal and the record in the above-identified case have been received in this office.

The record discloses that the notice of appeal was filed and the filing fee was paid after the 30-day period allowed by the Department's rules of practice (43 CFR 1958 Supp. 221.2(a) and (b), Circular 1999 enclosed). Although the notice of appeal and the filing fee were received within the grace period provided in section 221.92(b), the postmark on the envelope shows that it was not transmitted before the expiration of the 30-day period within which to file the appeal, and therefore we cannot waive the delay in filing. Consequently, the Bureau cannot consider your appeal and must close the case as provided in section 221.2(c).

The case record will be returned to the Land Office Manager, through the Bureau's State Supervisor, for any further necessary action, including the refund of any moneys which may be due in connection with the case.

Sincerely yours,

~~For the Director:~~

A. H. Furr

Appeals Officer

Enclosure

Copy to:

SS (California)
LO (Sacramento) —

RECEIVED
APR 7 1961
BUR. OF LAND MANAGEMENT
STATE OFFICE
DEPT. OF THE INTERIOR
SACRAMENTO, CALIFORNIA

In reply refer to:

LO

Sacramento 060719
5.04g
Small Tract Application

DEPT. OF INTERIOR
SACRAMENTO, CAL.
APR 7 2 27 PM 1961
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

APR 4 1961

Date Land Office decision rendered: December 20, 1960
Decision served: December 23, 1960
Appeal filed: January 27, 1961
Envelope containing appeal postmarked: January 26, 1961
Filing fee paid: January 27, 1961

Mrs. Lorraine I. Ridpath
121-B Hornet St.
China Lake, California

Dear Mrs. Ridpath:

Your appeal and the record in the above-identified case have been received in this office.

The record discloses that the notice of appeal was filed and the filing fee was paid after the 30-day period allowed by the Department's rules of practice (43 CFR 1958 Supp. 221.2(a) and (b), Circular 1999 enclosed). Although the notice of appeal and the filing fee were received within the grace period provided in section 221.92(b), the postmark on the envelope shows that it was not transmitted before the expiration of the 30-day period within which to file the appeal, and therefore we cannot waive the delay in filing. Consequently, the Bureau cannot consider you appeal and must close the case as provided in section 221.2(c).

The case record will be returned to the Land Office Manager, through the Bureau's State Supervisor, for any further necessary action, including the refund of any moneys which may be due in connection with the case.

Sincerely yours,

~~For the Director:~~

T. H. Furr

Appeals Officer

Enclosure

Copy to:

SS (California)
LO (Sacramento)

053238 appeal to Sec - Index 7-~~31~~-61
13
Remanded A 28924 3-18-63
affirmed A28924 a

DEPT. OF INTERIOR
SACRAMENTO, CAL.

APR 17 10 00 AM 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0115451 etc.
5.04g

Certified Mail
Return Receipt Requested

DECISION

April 4, 1961

Peter Joseph Ernzer et al. : Small Tract Applications

Decisions Affirmed

Those persons listed on the attached appendix (14 appellants) have appealed from decisions of various dates rejecting their small tract applications for the reason that the lands applied for have been classified as unsuitable for small tract purposes because of lack of access and adverse topography.

The appellants, in the course of their appeals, have not presented any positive or substantial evidence that the classification of the lands is in error, and their allegations consist merely of unsupported self-serving statements to the effect that the lands are suitable for small tract development. The Department has consistently held that a classification adverse to an applicant for public lands will not be disturbed in the absence of evidence of positive error in the classification. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956). The refusal to classify the lands in question for small tract purposes is also in conformity with the land conservation program policies of the Department announced on February 14, 1961, which provide in pertinent portion that leases, sales and other dispositions of public lands will not be made unless the lease or disposition will serve a sound public purpose, including the satisfaction of bona fide needs of the general economy and improving the administration of the public lands. See also 43 CFR 1959 Supp., 257.2 (a). Classification of the lands for small tract development in the instant cases would tend to complicate rather than to improve the administration of the public lands in the areas in which they are located. Accordingly, it was proper to reject the appellants' applications and the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved. In taking an appeal there must be strict compliance with the regulations.

Appeals Officer

Enclosure

DISTRIBUTION:

Each appellant (Certified Mail)
Lands Staff Officer
AA-1
AA-2
SS (California)
LO (Sacramento)
Asst. to the SS (Los Angeles)
LO (Los Angeles)
SS (Arizona)
LO (Phoenix)
Case File
Permanent File
Attorney's Reading File
AO Reading File
RBO

APPENDIX

Appellant	Serial Number
Peter Joseph Ernzer 834 N. Griffith Park Drive Burbank, California	Los Angeles 0115451
George A. Bryson 801 E. Delaware Road Burbank, California	Los Angeles 0115763
James L. Blake 732 N. Pickering Avenue Whittier, California	Los Angeles 0128163
Louis Armand Gauthier 325 Beverly Place SantaAAna, California	Los Angeles 0145682
Ray I. Berryman 17020 Glenburn Avenue Torrence, California	Los Angeles 0141578
Richard Dale Newcomer 4404 Via Azalea Palos Verdes Estates, California	Los Angeles 0141579
Carolyn Reville Miller 2643 Monogram Avenue Long Beach, California	Los Angeles 0142582
Michael Rettinger 5007 Haskell Avenue Encino, California	Los Angeles 0161659
Virginia Rettinger 5007 Haskell Avenue Encino, California	Los Angeles 0161661
Carl J. Raestle c/o Maggie Mines Black Canyon, Arizona	Phoenix 086498
Charles Johnston Hawkins c/o Gilmore and Gilmore 301 Crocker-Anglo Building 1007 Seventh Street Sacramento 14, California	Sacramento 053238 ✓
Otto Frolic c/o Gilmore and Gilmore 301 Crocker-Anglo Building 1007 Seventh Street Sacramento 14, California	Sacramento 053239 ✓

Appendix Cont.

Millicent C. Baker Frolic c/o Gilmore and Gilmore 301 Crocker-Anglo Building 1007 Seventh Street Sacramento 14, California	Sacramento 056268
Stanley Walton c/o Gilmore and Gilmore 301 Crocker-Anglo Building 1007 Seventh Street Sacramento 14, California	Sacramento 056269

In reply refer to:
Sacramento 0?4161
5.04

Appeal to Sec
affirmed A-28905
9-4-62

APR 14 1961

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Mr. John R. [illegible]   Small Tract Application

Decision Affirmed

Mr. John R. [illegible] has appealed from a decision dated November 8, 1960, rejecting his above-identified small tract application because the land applied for has been classified as being more suitable for disposal to the State of California in connection with its prior filed exchange application, Sacramento 0[illegible], than for small tract purposes.

The appellant asserts in substance that his application should be given consideration because he had not been informed as to the conflicting exchange application at the time he filed his application, and that his rights under the small tract act of June 1, 1938 are being circumvented by allowing the State's exchange application. The assertions made by the appellant, however, are nothing more than unsupported self-serving statements. It is well established that the mere filing of an application under the small tract act does not vest in the applicant any legal right or present interest in the land. [illegible], A-[illegible] (August 17, 19[illegible]). Moreover, it is in the discretionary authority of the Secretary of the Interior to consider and weigh all factors which have a bearing on the suitability of the public land for use or disposal, including the effect on the public interest. [illegible], 64 I.D. [illegible] (1957). It has been determined that it is in the best public interest to dispose of the land in question to the State of California pursuant to its exchange application. Accordingly, the decision appealed from is affirmed.

Mr. John R. [illegible] is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form [illegible]. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Division of State Lands
State of California
1[illegible] 12th Street
Sacramento, California

A. H. Furr

Appeals Officer

Enclosure

appeal to Sec.
affirmed A-29038
ltr Decision - 5-27-63

File in
DOCKET FILES

In reply refer to:

Sacramento 056128, etc.
053817, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 14, 1961

Certified Mail
Return Receipt Requested

DECISION

James G. Blackwell *et al.* Jack W. Hickey *et al.*	:	Small Tract Applications

Decisions Affirmed

The persons named in Appendices A and B have appealed from decisions dated November 4 and December 20, 1960, respectively, rejecting their small tract applications for the reason that it has been determined that the lands applied for should be retained in public ownership. 1/ The lands applied for have been classified as valuable for grazing, watershed management, recreation, power production, and mineral resource purposes. In addition, the State of California Department of Fish and Game has requested that the lands be retained in public ownership for fish and big game management.

The appellants contend in substance in the course of their appeals that the decisions appealed from are based on erroneous classification of the lands. However, after a careful review of the contentions contained in the briefs submitted by the appellants, we conclude that they have not presented any positive or substantial evidence to show that the classification of the lands is erroneous. In the circumstances, the classification will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236, A-27237 (February 29, 1956). The refusal to classify the lands for small tract purposes is also in conformity with the policies of the new land conservation program announced by the Department on February 14, 1961, which provide in pertinent part that leases, sales or other dispositions of public lands will not be made unless the lease or disposition will serve a sound public purpose, including the satisfaction of bona fide needs of

---

1/ The appellants listed in Appendix "A" have applied for lands in secs. 3, 4, 10, and 37, T. 17 S., R. 29 E., M.D.M., California, located in Tulare County, and in the vicinity of Terminus Dam and Reservoir. The appellants listed in Appendix "B" have applied for lands in secs. 26, 35, and 36, T. 12 N., R. 19 E., M.D.M., California, in Alpine County.

the general economy and improving the administration of the public lands. Disposal of the lands in the instant cases for small tract purposes would not serve a sound public purpose. Accordingly, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved in the appeal. In taking an appeal there must be strict compliance with the regulations.

Appeals Officer

Enclosure

DISTRIBUTION:

Each appellant listed on Appendix "A" (Certified Mail)
Gilmore & Gilmore, Attorneys for appellants listed on Appendix "B"
  (Certified Mail)
Each appellant listed on the attached Appendix "B" (Regular Mail)
Hon. George P. Miller, House of Representatives
AA-1
SS (California)
LO (Sacramento)
Lands Staff Officer
Case Files
Permanent File
Attorneys' Reading File
AO Reading File
RBO

APPENDIX "A"

Appellant	Serial Number Sacramento
Jack W. Hickey Box 544 Exeter, California	053817 ✓
F. T. Wilson Route 2, Box 676 Exeter, California	053818 ✓
Richard F. Summer 3449 Page Street Redwood City, California	053825 ✓
Cesare J. Bianchi 213 E. Acequia Visalia, California	053838 ✓
Mervin C. McCoy Three Rivers, California	053869 ✓
William M. Wilcoxen 1925-A Stuart Street Berkeley 3, California	053911 ✓
Robert Kimble III 3034 South West Street Visalia, California	054315 ✓
Edward V. Symons, Jr. Three Rivers, California	054390 ✓
Charles M. Garver 313 Peach Drive Exeter, California	055137 ✓
Keith R. Carey 415 N. Divisadero Street Visalia, California	054455 ✓
Arthur A. Jones Atwater Building 3119 Glendale Blvd. Los Angeles 39, California	054678 ✓
Marshall R. Wanzer Edgewood Orchards Farmersville, California	054699 ✓

APPENDIX "A" (Cont'd)

Appellant	Serial Number
	Sacramento
Stanley Dickover, Jr. 28 Tanglewood Road Berkeley, California	054827 ✓
John J. Jares, M. D. 1019 Gayely Street West Los Angeles, California	054872 ✓
Fred Robins Route 4, Box 106-D Visalia, California	054873 ✓
Hugh M. Cox Three Rivers, California	054882 ✓
Richard B. Lang Star Route Three Rivers, California	054936 ✓
Charles O. Mainwaring Rt. 4, Box 487 Visalia, California	054966 ✓
Richard A. Tinker 720 N. Fulton Street Fresno, California	054981 ✓
Arthur M. Becker, Jr. 2537 S. Locust Street Visalia, California	055216 ✓
A. M. Becker, Sr. 730 N. Highland Avenue Visalia, California	055236 ✓
Saul W. Cosloy 817 Feemster Street Visalia, California	055243 ✓
Harry Kulick 912 W. Kaweah Visalia, California	055267 ✓
May J. Mainwaring 945 S. 2nd Ave., West Visalia, California	055279 ✓

APPENDIX "A" (Cont'd)

Appellant	Serial Number
Orval L. Ellis 135 Portola Exeter, California	Sacramento 055514 ✓
George E. Webb Box 222 Three Rivers, California	056212 ✓
Charles V. Halencak, Jr. 305 Peach Drive Exeter, California	056214 ✓
Douglas W. Cox 415 N. Church Street Visalia, California	056241 ✓
Edward J. Slepicka Route 6, Box 514-B Visalia, California	056243 ✓
Barbara B. McKinney 65 College Park Davis, California	056244 ✓
James W. Lang 311 W. Oak Visalia, California	056263 ✓
Maurice E. Ramsey Route 6, Box 780 Visalia, California	056279 ✓
Melvin R. Harrell 1507 N. Giddings Visalia, California	056284 ✓
John B. Bibb Route 6, Box 5144 Visalia, California	056293 ✓
Wilfred Bibb 1805 Caldwell Avenue Visalia, California	056336 ✓

APPENDIX "A" (Cont'd)

Appellant	Serial Number
	Sacramento
George M. and Helene S. Clark 920 Yale Avenue Bakersfield, California	056498
Hazel P. Wall Route 3, Box 320-K Visalia, California	056549

APPENDIX "B"

Appellant	Serial Number
James G. Blackwell 119-A Hancock China Lake, California	Sacramento 056128 ✓
John T. Dunaway 214-B Nitscher China Lake, California	056129 ✓
Myra L. Riseling 1033 Fairbrook Lane Santa Ana, California	059825 ✓
Margaret Spooner 342 Haloid Road Ridgecrest, California	059846 ✓
Ray L. Robinson 1348 Whitegate Avenue San Jose, California	059849 ✓
Betty P. Curtis 605-B Nimitz China Lake, California	059853 ✓
Ray A. Sinnott 210-B Fowler China Lake, California	059854 ✓
Irene A. Weakley 237 Fire Opal Drive Ridgecrest, California	059859 ✓
Loretta M. Cleary 607-A Nimitz China Lake, California	059862 ✓
J. R. Schreiber 607 Saratoga China Lake, California	059857 ✓
Henry R. Blecha Box 437 China Lake, California	059858 ✓
Etta M. Parker 10449 Tiara Street North Hollywood, California	059392 ✓

APPENDIX "B" (Cont'd)

Appellant	Serial Number
	Sacramento
Merrie E. Erickson 769 - 33rd Street Manhattan Beach, California	059822 ✓
John F. Reilly Box 265 China Lake, California	059961 ✓
Albert R. Hammer, Jr. 212-B. Groves Street China Lake, California	059962 ✓
Kathryn I. Alpert 201-B Ellis Street China Lake, California	059963 ✓
Margaret F. Craig 301 Segunda Ridgecrest, California	059864 ✓
Frank H. Young, Jr. 237 Helena Street Ridgecrest, California	060016 ✓
Eli La Coille 34 E. Colorado Blvd. Arcadia, California	060175 ✓
Charles L. Luethy 3017 W. Street Sacramento, California	060207 ✓
Helen Jean Perrine 729 Shawnee Court Hayward, California	061463 ✓
George R. Straggas 30431 Treeview Street Hayward, California	061461 ✓
Ruth L. Doolittle 484 Shirley Avenue Hayward, California	061456 ✓

APPENDIX "B" (Cont'd)

Appellant	Serial Number
	Sacramento
George A. Miller Box 3601 San Francisco 19, California	061451 ✓
Evelyn M. Adams 30460 Prestwick Avenue Hayward, California	061377 ✓
Ruth E. Mahaffy 14275 Rose Drive San Leandro, California	061376 ✓
Mike A. Ruggieri 30452 Prestwick Avenue Hayward, California	061374 ✓
Dorothy E. Aylsworth 30459 Prestwick Avenue Hayward, California	061371 ✓
Orrin H. Sholes 16770 Rolando Avenue San Leandro, California	060836 ✓
Robert A. Plummer 1807 Modoc Avenue Hayward, California	060834 ✓
Howard E. Waite 4015 Seven Hills Road Castro Valley, California	060829 ✓
Bernice A. White 4015 Seven Hills Road Castro Valley, California	060828 ✓
Helen Ruggieri 30452 Prestwick Avenue Hayward, California	060801 ✓
Lloyd D. Aylsworth 30459 Prestwick Avenue Hayward, California	060799 ✓
Reed L. Adams 30460 Prestwick Avenue Hayward, California	060798 ✓

APPENDIX "B" (Cont'd)

Appellant	Serial Number
Robert C. Mahaffy 14275 Rose Drive San Leandro, California	Sacramento ✓ 060784
Lawrence S. Trimble 1701 Markham Way Sacramento 18, California	060225 ✓
Frank G. Luethy 2708 Clay Street North Sacramento, California	060209 ✓
Hada M. Luethy 2708 Clay Street North Sacramento, California	060210 ✓
Charles R. Luethy 5607 Vista Avenue Sacramento, California	060208 ✓
Karl V. Schultz 18322 Carlwyn Drive Castro Valley, California	060203 ✓
Herbert T. Lotes 203-A Byrnes Street China Lake, California	060015 ✓
John J. Fitzgerald 2120 Roselin Place Los Angeles 39, California	060021 ✓
Mary E. McClendon 309-B Groves Street China Lake, California	060017 ✓

appeal to Sec
affirmed A-29036
(ltr Dec)

In reply refer to:
Sacramento 060020
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 9, 1961

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Mrs. Vena V. Paxton	:	Small Tract Application

Appeals Officer's Decision Vacated
Manager's Decision Affirmed

On April 7, 1961, this office issued a decision summarily dismissing the appeal filed by the above-identified appellant for the reason that no statement of reasons had been filed in support of the notice of appeal. It has subsequently been discovered that a statement was filed by the appellant's son-in-law to support not only his own appeal but the appeal filed by Mrs. Paxton as well.

Accordingly, the decision of April 7, 1961, summarily dismissing the appeal, is vacated.

The record shows that the appellant's small tract application was rejected because it had been determined that it would be more in the public interest to classify the land for which she had applied for retention in public ownership for grazing, watershed management, recreation, power production, mineral resource management and for fishing and big game management purposes. The appellant's statement of reasons presents no positive and substantial evidence that such a classification is erroneous. Hence, the classification will not be disturbed. Mary Refugio Jackson et al., A-27236, A-27237, (February 29, 1956).

The classification of the lands in question in this case is in conformity with the policies of the Department's Land Conservation Program, announced February 14, 1961. Among other things, this program provides that leases, sales, and other dispositions of public lands will not be made unless they will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and the improvement of the public lands. The allowance of the appellant's small tract application would not be consistent with this program. Therefore, the decision appealed from is affirmed.

Mrs. Paxton is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Appeals Officer

Attachment

DISTRIBUTION:

Mrs. Vena V. Paxton (Certified Mail)
John F. Reilly (Regular Mail)
AA-1
SS, California
LO, Sacramento
Case File
Perm. File
AO Read. File
LLM

Reply refer to:

Sacramento 056128, etc.
053817, etc.
6.05c

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Appeal to Sec
Affirmed A-29035 (Ltr Dec)

May 24, 1961

Certified Mail
Return Receipt Requested

DECISION

James G. Blackwell *et al.*	:	Small Tract Applications
Jack W. Hickey *et al.*	:	

Supplemental Decision

This decision supplements the Bureau decision, James G. Blackwell et al., Jack W. Hickey et al., Sacramento 056128, and 053817, etc., of April 14, 1961, which affirmed the rejection of the small tract applications listed on Appendices A and B, attached to and made part of that decision.

The decision of April 14, 1961, provides that each of the appellants listed on Appendix B be served with a copy of the decision by regular mail, whereas a copy of the decision should have been served on each such appellant by certified mail.

Accordingly, each appellant listed on the Appendix B of the April 14 decision is allowed 30 days from receipt hereof within which to file an appeal to the Secretary of the Interior, if they choose to do so, in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application involved in the appeal. In taking an appeal there must be strict compliance with the regulations.

This decision does not otherwise affect the determination made in the Bureau decision of April 14, 1961.

John B. Ficcolo
Acting Appeals Officer

Enclosure

Distribution on page 2

DISTRIBUTION:
Hon. Harlan Hagen, House of Representatives
Each appellant concerned (Certified Mail)
SD (California)
LO (Sacramento)
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AO Reading File
RRO

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
AUG 15 10 00 AM 1961
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Juneau 011869 etc. 1/
6.05c

Certified Mail
Return Receipt Requested

August 7, 1961

DECISION

Ralph D. Guterman et al 1/ : Small Tract Applications

Appeals Dismissed

The appeals filed by the 15 persons listed in the attached appendixes, involving their small tract applications, are hereby summarily dismissed for the following reasons: 1/

Each person listed in Appendix A has failed to file a statement of reasons in support of his appeal and the time for filing the statement in each case has expired. (43 CFR 221.3)

Statements of reasons were filed for the persons listed in Appendix B. However, they were not filed within the time required and the delay in filing cannot be waived, although they were received within the grace period provided in 43 CFR 221.92(b), as the record indicates that the statements of reasons were transmitted (postmarked) after the expiration of the period allowed for filing.

There has been no proof submitted that the person listed in Appendix C served a copy of the notice of appeal and statement of reasons upon the adverse party named in the decision being appealed within the time required. (43 CFR 221.4, 221.95)

Dismissal of appeals for failure to file a statement of reasons timely, or to serve the adverse party with copies of the notice of appeal and statement of reasons within the time required, is mandatory. (43 CFR 221.98.

The above-cited regulations, as well as the regulations relating to the procedures for an appeal to the Secretary of the Interior (see in particular 43 CFR 221.32 to 221.35), are contained in the enclosed Circular 1999.

Each person listed in the attached appendixes is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations. If an appeal is taken the amount of the filing fee will be $5.00 for each case involved in the appeal. In taking an appeal there must be strict compliance with the regulations.

1/ The names of the appellants, the serial numbers of their applications, and other pertinent data are shown on the attached appendixes.

If appeals are taken, Mrs. Goldie J. Bartel (Anchorage 051637) and Mr. Ralph D. Guterman (Juneau 011869) must serve copies of the appeal on the adverse party: State of Alaska, Department of Natural Resources, Division of Lands, 344 - 6th Avenue, Anchorage Alaska.

John B. Piccolo
Acting Chief, Division of Appeals

Enclosure

DISTRIBUTION:

Each appellant listed in the attached appendix (Certified Mail)
State of Alaska, Department of Natural Resources, Division of Lands
(Regular Mail)
Mr. George B. Corn, Attorney for Appellants Arizona 022501 through 022505
OS (Anchorage, Juneau) (Certified Mail)
SD (Arizona, California, Nevada, New Mexico)
LO (Anchorage, Juneau, Phoenix, Sacramento, Reno, Santa Fe)
Case Files
Div. of Lands and Recreation
Perm. File
Attorney's Reading File
Appeals Reading File
JB

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AUG 15 1961
STATE OFFICE
BUR. OF LAND MGMT.
SACRAMENTO, CALIF.

APPENDIX A

Appellant	Serial Number of Application	Type of Application	Date of Decision Appealed From	Date Notice of Appeal Filed
Ralph D. Guterman General Delivery Juneau, Alaska	Juneau 011869	Small Tract	February 13, 1961	March 13, 1961
John J. Gleeson 1016 California St. Butte, Montana	Sacramento 051083 ✓	Small Tract	March 27, 1961	April 27, 1961
Willard Mack Woodward Box 33 Albion, California	Sacramento 054976 ✓	Small Tract	March 27, 1961	April 28, 1961
Bradford L. Blandin Box 2288, Buckeye Rt. Redding, California	Sacramento 055018 ✓	Small Tract	March 27, 1961	April 26, 1961
Wayne P. McGee * 250 Lost Lane Redding, California	Sacramento 062033 ✓	Small Tract	March 27, 1961	April 25, 1961
Lawrence R. Sackett * Buckeye Rt. Box 2178L Redding, California	Sacramento 062053 ✓	Small Tract	March 27, 1961	April 24, 1961
Cecil C. Gallagher 2001 So. 11th St. Las Vegas, Nevada	Nevada 011816	Small Tract	March 23, 1961	April 25, 1961
y M. Brown, Jr. Pagosa Springs, Colorado	New Mexico 076988	Small Tract	March 7, 1961	April 10, 1961

---

* Excess filing fees of $5.00 each paid by these two individuals has been refunded by United States Treasury check.

APPENDIX B

Appellant	Serail Number of Application	Date of Decision Appealed From	Date Notice of Appeal Filed	Date Statement of Reasons Filed
Robert E. Caldwell 2210 West Jackson St. Phoenix, Arizona	Arizona 022501	Feb. 21, 1961	March 17, 1961	April 26, 1961 Transmitted (Postmarked) April 24, 1961
George B. Corn 1142 East Bethany Home Road Phoenix Arizona	Arizona 022502	Feb. 21, 1961	March 17, 1961	"
Mrs. Clara Caldwell 2210 West Jackson St. Phoenix, Arizona	Arizona 022503	Feb. 21, 1961	March 17, 1961	"
Mrs. Kathleen M. Corn 1142 East Bethany Home Road Phoenix, Arizona	Arizona 022504	Feb. 21, 1961	March 17, 1961	"
Robert N. Caldwell 2210 West Jackson Phoenix, Arizona	Arizona 022505	Feb. 21, 1961	March 17, 1961	"
Delbert G. Klein 2077 Gold Street Redding, California	Sacramento 062071	March 27, 1961	April 20, 1961	May 31, 1961 Transmitted (Postmarked) May 25, 1961

APPENDIX C

Mrs. Goldie J. Bartel P. O. Box 692 Wasilla, Alaska	Anchorage 051637	Dec. 5, 1960	Jan 3, 1961	Jan. 3, 1961

DOCKET FILES 20

DEPT. OF INTERIOR
SACRAMENTO, CAL.

DEC 11 10 00 AM 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 052289

December 4, 1961

Certified Mail
Return Receipt Requested

DECISION

George S. Maxey	:	Small Tract Application

Decision Affirmed

George S. Maxey has appealed from a decision dated May 26, 1961, which rejected his small tract application for the reasons that it would, among other things, (1) involve the Bureau in costly topographic surveys to subdivide the rough lands into irregular tracts, (2) the development of roads to conform to the topography would impose a heavy expense on the local government, and (3) the disposal of the lands for small tracts would be inconsistent with community or area development plans.

The appellant alleges that "the determination that much development by way of roadways, the rectangular sites, and other layouts is at best a means of avoiding a direct answer to a problem". The appellant also makes other allegations that are self-serving or hypothetical in nature.

The Department has consistently held that appellants who challenge the validity of a classification are required to assume the burden of showing by substantial, positive evidence that the action of which they complain is erroneous. Cf. Mary Refugio Jackson, et al., A-27236 etc. (February 29, 1956). The appellant's self-serving and hypothetical allegations cannot be accepted in place of evidence. Utah-Idaho Graziers Association, Peter McKellar, A-28100 (December 22, 1959).

Moreover, under the present departmental land conservation program, leases, sales or other dispositions of public lands will not be made unless it will serve a sound public purpose, including the bona fide needs of the general economy and improvement of the administration of the public lands.

The determination by the Land Office is correct. Accordingly, the decision appealed from is affirmed.

George S. Maxey is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Newton and Braun, Attorneys for Appellant (Certified Mail)
George S. Maxey (Regular Mail)
Chief, Division of Lands and Recreation
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DEC 11 10 00 AM 1961

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 055233
055266

December 5, 1961

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DECISION

Francis J. Gist, Jr. Catherine E. Gist	:	Small Tract Application

Decision Affirmed

The above-named persons have appealed from the decision dated May 18, 1961, which rejected their small tract applications for the reasons that the applied for lands are in first form reclamation withdrawal for the Central Valley Project and the Bureau of Reclamation does not wish to make the lands available for small tract use and that disposal of the lands at the present time would not be in the public interest.

The record shows that the applied for lands are in the Whiskeytown reservoir area where the public recreational possibilities are recognized as being on the spectacular side. The majority of the land must remain in a withdrawn status until after the completion of the reservoir project by the Bureau of Reclamation which will take several years. Furthermore, it would not be in the public interest to dispose of any of the land in this area until it is determined, by detailed field examination and studies of public recreational needs, which lands should be developed for recreational use and which will be needed by the Bureau of Reclamation for structures to complement the Whiskeytown reservoir.

The Department has held that applications under the Small Tract Act are properly rejected where the applied for lands are required to be retained in Federal ownership for reclamation and public recreation purposes. Claudia H. Smith et al., A-27781 etc. (December 12, 1958). Moreover, it is not permissible to suspend action on small tract applications until some indefinite date when the withdrawal might be revoked, and such applications must be rejected. John Rovetto, A-27521 (December 9, 1957).

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $10.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Francis J. Gist, Jr. (Certified Mail)
Catherine E. Gist (Certified Mail)
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Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 058226

December 6, 1961

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DECISION

Julietta T. Mullaney : Small Tract Application

Decision Affirmed

This is an appeal from a decision of the Manager, Sacramento Land Office, dated August 24, 1961, authorizing the appellant to purchase a small tract 1/ by submitting a purchase price of $2,970 within 60 days from receipt of such decision or the case would be closed without further notice. The tract has been classified as suitable for disposal by direct sale under Classification Order No. 582, as amended June 15, 1961.

The appellant contends, in substance, that the subject lot should have been leased with an option to purchase within a three-year period; that the appraised value is above that which could be anticipated; that it is not logical for the average citizen to raise the necessary money on a 60-day notice; that other small tracts in the area were appraised at less value; that other applications for small tracts investigated and prepared at the same time for lots 25, 29 and 37 resulted in issued leases. 2/

Regulations promulgated pursuant to the Small Tract Act provide, where a small tract is classified for direct sale, that the purchaser thereof must tender the fair market value of the land when required. 43 CFR, 1960 Supp., 257.5. Where lands are classified for direct sale, an applicant has no right to a lease. Augusta Lamb Donovan Estate et al., Nevada 020972, etc. (April 4, 1961). See also 43 CFR 257.2(b).

The Secretary of the Interior has emphasized in his public land conservation program announced February 14, 1961, that the Government must receive full value for the sale of the property involved.

---

1. Lot 28, Sec. 2, T. 6 N., R. 13 E., M.D.M., California

2. The record shows that these lots were classified for lease and sale by Small Tract Classification No. 582 dated November 10, 1959, but were not included in the amendment of June 15, 1961, as suitable for disposal by direct sale.

For the appellant to challenge successfully the appraised price of a small tract, she must show by positive and substantial evidence that the appraised price does not actually reflect the current fair market value of the land. Daniel Hicken, A-27366 (March 5, 1959). The appraisal involved in the instant case has been reviewed and found to be based on the proper criteria. Adjustments in the prices for specific tracts were made for topographic conditions, access and other factors affecting the value of the tracts.

In view of the foregoing, the appellant is allowed 30 days from the receipt of this decision within which to tender the purchase payment to the Sacramento Land Office.

Mrs. Mullaney is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken there is a $5.00 filing fee. In taking an appeal there must be strict compliance with the regulations.

If the purchase price is not tendered within 30 days from service of this decision, and in the absence of an appeal to the Secretary, the case will be closed on our records without further notice and returned to the land office, through the State Director, for action looking toward refund of the advance payment.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Mrs. Julietta T. Mullaney (Certified Mail)
Chief, Division of Lands and Recreation
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Washington 25, D. C.

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6.05c
Sacramento 054590
057768
057891

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December 6, 1961

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DECISION

Clarence A. Lane :
Daniel D. Howard : Small Tract Applications
John P. Pisor :

Decision Affirmed

The above named persons have appealed from a decision dated May 29, 1961, which rejected their small tract applications for the reasons that the lands applied for have been classified as unsuitable for small tract purposes because subdivision of the land under the Small Tract Act cannot be accomplished in conformity with El Dorado County subdivision ordinances due to unsuitable terrain and lack of proper access to individual tracts and because the rough and mountainous land does not lend itself to delineation into rectangular tracts, thus, a small tract classification would involve the Bureau in detailed subdivisional planning and development.

The appellants submitted identical statements of reasons on appeal which show that the width of the applied for lands have an approximate 25% grade and the length has an approximate 12% grade. The appellants say that this is exactly what they want for secluded mountain homes. They also contend that the Bureau of Land Management would not be directly involved in surveying small tracts.

It is the province of the Director of the Bureau of Land Management to consider and determine that public lands are to be surveyed. See section 3 of the Manual of Instructions for the Survey of the Public Lands of the United States 1947.

This Bureau has previously held that small tract dispositions that would serve only the needs of the applicants is not necessarily in the public interest. Cf. Madeline Annie Albert el al., Sacramento 050009 etc. (May 16, 1958).

The Departmental land conservation program requires that leases, sales, or other dispositions of public lands serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and improvement of the administration of the public lands. See also 43 CFR 1960 Supp. 257.2(a). This public purpose policy extends to local governments whose subdivision ordinances set the pattern for the orderly development of local roads, sanitation facilities, utilities, and other community services. Accordingly, proposed small tract developments that are inconsistent with county subdivision ordinances will not be allowed.

The appellants have not shown by substantial, positive evidence that the requested dispositions would serve a sound public purpose, or that the adverse classification is in error, and the classification will not be set aside. Joseph M. Schuck et al., A-28603 (August 16, 1961).

Therefore, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $15.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 066009
066010

December 6, 1961

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DECISION

Wallace L. Anderson	:	Small Tract Applications
Allen B. Coats	:	

Decision Affirmed

The above-named persons have appealed from the Manager's decision, dated March 20, 1961, which rejected their small tract applications filed February 14, 1961. The decision held that the applied for lands were, on February 9, 1961, officially noted on the land office records as being under consideration for small tract classification, and having been so noted the lands were not subject to application and the applications should have been returned. 43 CFR, 1960 Supp., 257.6 (e) (4)(iii).

The appellants contend in substance that since their applications were not returned, they were accepted by the land office and should be considered as filed. They state they hold receipts given to each of them for filing fees, that a valid contract was made, and their applications should be allowed.

The United States cannot be bound by the unauthorized acts of its agents. *Calatona Fertilizer Company*, 66 I.D. 4(1959). The applications were properly rejected in accordance with the regulation cited. The acceptance of the applications was erroneous. The decision appealed from properly corrected the error, except for the return of the applications. However, the applications will be returned when action on the appeals has become final. The filing fees will also be refunded as specified in the decision appealed from.

The decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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Appeal to Sec
~~affirmed~~ Sec ltr Dec.
A-29386 7-10-63

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 046215
048095
052650

December 14, 1961

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DECISION

Muriel H. Anderson Dave E. Egenhoff Francis C. Hall	: : : :	Small Tract Sales

Decisions Affirmed

The above named persons have appealed from separate decisions, dated June 26, 1961, which offered them small tracts by direct sale at stated prices that were determined by current appraisals.

The appellants allege that the offered lands were appraised too high, and in support of their allegations they contend that other lands in the vicinity have sold for substantially less per acre than the offered lands.

The appellants' evidence concerns land sales made in the years 1952 and 1956. On the other hand, the Bureau's appraisals of the offered lands were based upon private sales of small parcels of unimproved lands, in the West Point area during the years 1959 and 1960, which lands were similar in size, location, and access features. The sales prices of the offered lands appear to have been determined by accepted appraisal procedures, and although the prices are higher than those which the appellants expected, they have not shown by any probative evidence that the appraisals are, in fact, erroneous.

The action taken in these cases is consistent with the Department's land conservation program which has a mandatory requirement that no transaction will be entered into or consummated where, in the course of processing, evidence develops that the Government will not receive full value for the public land involved in the transaction.

Accordingly, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

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~~La~~ appeal to Sec. affirmed ltr. Dec. 1-21-64

Sac - A-29434

LA affirmed A-29410 ltr Dec 1-21-64

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Los Angeles 095886 etc.
Sacramento 049904 etc.

December 18, 1961

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DECISION

	:	
Herbert E. Roberts et al	:	Small Tract Applications
	:	

Decisions Affirmed

Herbert E. Roberts and the applicants listed in the attached appendices have appealed from decisions rejecting their small tract applications. In each case, the decision rejecting the application held that the lands applied for have been classified for retention in Federal ownership as the Monache-Walker Pass Land Management Area because the lands are valuable for one or more of the following uses: livestock grazing, watershed protection, wildlife conservation, recreational utilization or such other uses as are desirable and compatible.

Each of the appellants contends, in essence, that the decisions appealed from are based on erroneous information and that the tract for which he or she has applied is suitable for a homesite. Each of the statements of reasons has, however, been carefully examined without inducing the conclusion that the tracts applied for are more valuable for individual homesites than for retention in Federal ownership for one or more of the uses listed in the decisions appealed from. The classification of the lands in question was made only after a careful, extensive study of the entire Lake Isabella area, including a consideration of the impact the allowance of the applications would have on the present and future recreational and residential development of the area, was conducted by the Bureau of Land Management. The burden, therefore, rested on each applicant to show by substantial affirmative evidence that the conclusions reached as a result of this study was incorrect. Joseph M. Schuck et al., A-28603 (August 16, 1961).

One of the appellants contends the action taken by the Bureau in this matter is unconstitutional. Such contention overlooks the fact that the act of June 1, 1938 (52 Stat. 609), as amended, authorizes the Secretary of the Interior, in his discretion, to sell or lease a five acre tract of public land which he may classify as chiefly valuable for such disposition. Moreover, as the filing of a small tract application vests no rights to the land in the applicant, John R. Ross et al., A-27259 (March 12, 1956), the Secretary of the Interior may inquire into the propriety of the disposal of a small tract so long as legal title to the tract remains in the United States. State of Wisconsin et al., 65 I.D. 265 (1958).

The present classification of the land is in conformity with the policies embodied in the Department's current land conservation program, announced February 14, 1961. In part, this program provides that leases, sales and other dispositions of public lands will not be made unless such a transaction will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and the improvement of the administration of the remaining public lands.

Accordingly, the decisions appealed from are affirmed.

Each of the appellants is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application upon which favorable action is sought. In taking an appeal, there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Honorable Thomas H. Kuchel, United States Senate
Honorable John H. Rousselot, House of Representatives
Honorable H. Allen Smith, House of Representatives
Honorable Alphonzo Bell, House of Representatives
Honorable Clyde Doyle, House of Representatives
Honorable Edgar W. Hiestand, House of Representatives
Honorable Cecil R. King, House of Representatives
Young, Wooldrige & Paulden, Attorneys for Herbert E. Roberts (Certified Mail)
J. B. Tietz, Attorney for Joseph E. and Glenda M. Bogen and Jerome B. Gilbert (Certified Mail)
George W. Nilsson, Attorney for Donald E. Plater (Certified Mail)
Appellants Listed in Appendix A (Regular Mail)
Allyn B. Henderson, Attorney for Appellants Listed in Appendix B (Certified Mail)
Appellants Listed in Appendix B (Regular Mail)
Virgil V. Becker, Attorney for Appellants Listed in Appendix C (Certified Mail)
Appellants Listed in Appendix C (Regular Mail)
Each Appellant Listed in Appendix D (Certified Mail)
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LO (Riverside)
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APPENDIX A

	Los Angeles
Herbert E. Roberts	095886
Joseph E. Bogen	0139975
Glenda M. Bogen	0139996
Jerome B. Gilbert	0140941
Donald E. Plater	0160225

APPENDIX B

	Los Angeles
Hugh E. Day	0140269
Robert L. Marshall	0140335
R. L. Mellers	0140336
David R. Repsher	0140337
William Fegley	0140338
Robert E. Becker	0140536
Charles S. Allen	0140609
Robert R. Down	0140697
Howard B. Boreham	0140718
Roland S. Boreham, Jr.	0140740
Francis I. Powers	0142588
Mary B. Hanke	0142687
Thelma R. Hanna	0142688
Marguerite M. Day	0153527

APPENDIX C

	Los Angeles
William R. Warren	0162295
Rex M. Jensen	0162303
John E. Hill	0162307
Charles W. Boyle	0162311

APPENDIX D

	Los Angeles
James K. Hoffman	0140719
John F. Shield	0140947
Theodore B. Hoffman	0140756
S. E. Shield	0140948
Aaron K. Stull	0142865
Don Von Stull	0142899
Esla Harrison	0147346
Annella McLemore	0160430
Charlotte L. McCartney	0161199
Joel L. Brandon	0161203
Wilmer F. Tennis	0161737
John A. Heimlich	0162449
Olive F. Marrical	0163235
Forrest E. Marrical	0163236
Alberta B. Russell	0163237
John H. Marrical	0163240
Della S. Marrical	0163241
Henry Russell	0163249
Charles Cook, Jr.	0163310
Olive B. Fielding	0163344
James C. Fielding	0163345

APPENDIX D

	Sacramento
Carl A. Hannum	049904
Ray V. Villalobos	057566
Luis D. Lopez	057570
J. Ted Rosvall	058063
James V. Wylie	058596
David B. Borden	058753
Louise B. Shephard	058754
Louis E. Bushore	058764
Leslie J. Mickelson	058767
Ruth E. Abraham	058768
Jeanne Mickelson	058827
C. Gavin Jones	058835
Jan J. Vidmar	058840
Ann M. Vidmar	058841
Frank Vidmar	058842
Constance L. Cola	058848
Dalton D. Ferguson	058965
Earle L. Broiles	060120
Opal L. Mobley	060125
Florence L. Stumpf	060127
John D. Palhegyi	060132

APPENDIX D

	Sacramento
Arnold S. Palhegyi	060133
Lois C. Borst	060136
Margaret T. Turner	060139
Niels P. Terkelsen	060157
Gust E. Saari	060163
Tenne L. Benton	060191

①

062489

appeal to Sec 3-15-62
affirmed Mr Dec. A-29458 8-1-63

In reply refer to:
6,05c
Sacramento 061425
062489
062880
062925
062932

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 19, 1961

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DECISION

Morris Holmen :
Edward A. Peres :
Carl R. Condell : Small Tract Application
Roy A. Darbo :
Catherine Lincoln :

Decision Affirmed

The above-named persons have appealed from a decision dated June 21, 1961, which rejected their small tract applications for the reasons that:

1. The applied for lands are an integral part of the Sacramento District Timber Management Unit.
2. Proper development for homesites would involve the Bureau in expensive, complex subdivisional surveys.
3. Portions of the lands are appropriated under the mining laws.
4. The disposal would not satisfy the bona fide needs of the general economy.

The field reports show that the highest and best use of the land is for multiple use recreation and timber management and that the majority of private land in the area, suitable for homesites, is still undeveloped.

The appellants do not deny that the land is part of a timber management unit and that portions of the land are appropriated under the mining laws, therefore, these facts must be taken as admitted. The appellants contend, however, that the apportionment into tracts would not require special surveys; that the land is not suitable for timber; and, that supplemental plats would not be necessary. The appellants have not submitted any positive or substantial evidence to support their contentions.

The Department has consistently held that an applicant for public land who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. Since the appellants in the instant cases have not submitted any substantial or positive evidence that the adverse classification is in error, the classification will not be disturbed. Lewis E. King et al., A-27772 (November 21, 1958); Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $25.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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054504
055064
057207

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 21, 1961

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DECISION

William Rodrigues :
Abel A. Campini et al. : Small Tracts
Walter D. Snow :
Amy G. Mendenhall :

Decisions Affirmed

The above-named parties have appealed from separate decision-notices dated May 10, 11 and 23, 1961, approving the direct sale to them of certain described small tracts at purchase prices which are stated. The decisions indicated that if the moneys were not submitted within 60 days from receipt of the notices the cases would be closed. The notices informed the applicants of the exact acreage for which their separate applications had been classified as shown by Classification Order No. 628 dated May 9, 1961. In numerical order the acreage applied for was 2½, 2½, 1¼ and 5; as classified the respective acreages were .63, 2.19, 2.00 and 2.5, and the appraised values established are $1,200, 2,400, 2,400 and $2,280.

The appellants separately contend, in substance, that (1) although appraised approximately the same as certain lands in El Dorado County, the tracts under appeal are not of comparable desirability; and (2) the land is undeveloped without water or even a good view. The appellants point out that, under prior applications, small tracts similiarly situated were appraised by the Bureau in 1959 and 1960 at $45 and $50 per acre. They further contend that, in comparison, the new appraised values of $1000 per acre are unreasonable, particularly since the assessed values, as taken from the county records of other lands situated in the same section, are about $70 per acre. The appellant, William Rodriguez contends, in substance, that the apprsised value of the land in his offer is particularly excessive. He argues that an error was made and that the valuation of his tract, at the rate of $1,920 per acre, must have been computed on the acreage he applied for and not on the reduced acreage (.63) remaining after classification.

The contentions are not persuasive. Departmental regulations promulgated pursuant to the Small Tract Act provide where a small tract is classified for direct sale that the applicant must tender the fair market value of the land when required. See 43 CFR, 1960 Supp., 257.5. The Secretary has emphasized in the Department's land conservation program announced February 14, 1961, that "no transaction will be consummated where, in the course of processing, evidence develops that the Government will not receive full value." To successfully challenge the appraisal of a small tract, the appellant has the burden of showing by positive and substantial evidence that the price does not reflect the current fair market value of the land and the appraisal is in error. Daniel Hicken, A-27877 (March 5, 1959). The appellants have not met this burden, and we find no error in the appraisal.

Accordingly, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $20.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

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058096 appeal to Sec
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5-27-63

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058097
058202
058256

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 27, 1961

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DECISION

John S. King :
William H. King : Small Tract Applications
Warren Storkman :
John F. Wood :

Decision Affirmed

The above-named persons have appealed from a decision dated May 31, 1961 which rejected their small tract applications for the reasons that the applied for lands are an integral part of a timber management and yield plan which is incompatible with a small tract program and that subdivision and development of the land under the Small Tract Act would be in conflict with El Dorado County subdivision ordinances.

The records show that portions of the lands are appropriated in unpatented mining claims; that the timber management unit has an annual allowable cut conservatively valued at $50,000; that thousands of acres of private land more suitable for homesite development is located in the immediate vicinity of the applied for tracts; and, that the area is desirable for general public recreation.

The appellants submitted identical statements of reasons on appeal in which they contend that they "are not to be frustrated or deprived of their share in this national heritage" and that the land is suitable for small tracts.

The appellants, however, have not submitted any substantial or positive evidence to sustain their contentions. It has been consistently held by the Department that refusal to classify land chiefly valuable for small tract purposes on the ground that the land is not chiefly valuable for small tract purposes will not be disturbed in the absence of substantial evidence that the action complained of is erroneous and in view of the fact that the land is included in unpatented mining claims. Cf. Edward J. Rowley, A-28146 (May 24, 1960). As to the portions of the land not included in unpatented mining claims, the difficulty and the expense of segregating the mineralized from the nonmineralized land in the instant cases also militates against a determination that the land is suitable for small tract purposes. Cf. Joseph E. Hoffman et al., Arizona 06283 etc., (April 3, 1959).

Refusal to classify the applied for land for small tract purposes is also in conformity with the National Land Reserve Program of the Bureau which requires that leases, sales, or other dispositions of public lands must serve a sound public purpose including the satisfaction of the bona fide needs of the general economy and the improvement of the administration of the public lands. No such showing has been made in the instant cases.

Classification of land for small tract purposes will not be made, where such classification would be inconsistent with County subdivisional ordinances. See 43 CFR, 1960 Supp., 257.2(a).

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

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Bureau of Land Management
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6.05c
Sacramento 046198
051825
053269
053439

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January 8, 1962

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DECISION

Joseph W. Schloesser	:	Small Tract Applications
Thomas D. Farley	:	
John J. Vogler	:	
Elizabeth C. Cortez	:	

Decision Affirmed

The above-named persons have appealed from a decision dated June 7, 1961, which rejected their small tract applications for the reason that the major portion of the lands are embraced in a first-form reclamation withdrawal which the Bureau of Reclamation has reviewed, and determined that the lands involved cannot be restored to entry. A comprehensive report of field examination shows that the applied-for tracts are located in a high intensity recreation area for the ultimate use and benefit of the public.

One of the appellants, Mr. Schloesser, states that he has resided on the applied-for land since 1938 with the knowledge that the land belongs to the United States Government, having expended at least $1,500 in materials and labor in improving the property. He also alleges that he was assured by Bureau of Land Management personnel that he would have no difficulty in obtaining a lease and patent for the ground on which the improvements were placed. The Department is not bound or estopped by erroneous advice given by personnel of the Bureau of Land Management. Mike Abraham, A-28163 (November 16, 1959).

Some of the appellants contend that the disposition of the lands for small tracts would help the community by placing the tracts on the tax rolls. It appears, however, that the local taxes that may be realized from the individual uses of the lands would be negligible, compared to the public benefits to be realized from their varied recreational uses.

The Department has held that land in a reclamation withdrawal may not be classified for small tract purposes where the Bureau of Reclamation has determined that the lands are needed in connection with its projects. Cf. Frederick W. Goldsmith, A-28704 (August 22, 1961). Moreover, a small tract classification is properly refused where the public interest indicates that the land is more valuable for public recreational uses. Joseph M. Schuck et al., A-28603 (August 16, 1961).

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If appeals are taken the amount of the filing fee will be computed on the basis of $5.00 for each case included in the appeal. If the appeals cover all parties adversely affected by this decision the total filing fee is $20.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 8, 1962

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DECISION

Alberta C. Fry : Small Tract Application

Decision Vacated
Case Remanded

Alberta C. Fry has appealed from a decision of the Manager, dated August 29, 1961, rejecting her small tract application because the tract for which she had applied is a part of the Butte, Yuba, Nevada County Land Management Area and has been classified for retention in Federal ownership as a part of the National Land Reserve. The Manager reported that the tract, located near the historic Mother Lode, will be administered with other contiguous Federal Lands under a multiple-use concept for timber production, watershed protection, recreation, access to other Federal lands, wildlife, grazing, and mining.

An examination of the record shows that due consideration was not given to the particular characteristics of the applied for tract and the circumstances under which the application was filed. Therefore, the decision of the Manager is **vacated** and the case record is remanded to the Menger, through the Bureau's California State Director at Sacramento, for further consideration and appropriate action.

Karl S. Landstrom
Director

Enclosure

DISTRIBUTION:

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Hon. Harold T. Johnson, House of Representatives (Regular Mail)
Mr. Raymond A. Leonard, Attorney for the appellant (Regular Mail)
Mrs. Alberta C. Fry (Regular Mail)
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appeal to Sec. 3-13-62 LO - Sacramento

Vacated & Remanded Ltr Dec. 12-4-63

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Vacated & Remand A29454 5-5-64 (ltr. dec.)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
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Sacramento 054507 etc.

January 15, 1962

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DECISION

Forrest Miller et al.	:	Small Tract Applications

Decision Affirmed

Mr. Forrest Miller and 16 other persons 1/ have appealed from a decision, dated March 27, 1961, which rejected their applications. The decision held that the lands are in a first-form reclamation withdrawal and the Bureau of Reclamation has reported it does not wish to make the lands available for small tract leasing at this time. The decision also held, if the lands were leased for small tract purposes, with the consent of the Bureau of Reclamation, the classification would involve the Bureau of Land Management in complex cadastral surveys and detailed subdivisional planning and development and that it would result in scattered isolated settlements that would impose heavy burdens upon local governments for schools, police, health and fire protection, zoning and building inspection.

The records show that the applied-for lands comprise approximately 85 acres, are a part of a 460.52 acre tract of public lands, portions of which are considered to be mineral in character. The Bureau of Reclamation has fee-deeded rights-of-way on lands in this township and cadastral surveys would be necessary to delineate the public lands from certain irregular shaped patented lands located in the section involved.

Many of the allegations of the appellants question the need of a cadastral survey.

The delineation of survey boundaries on public lands must be made by cadastral surveyors; they cannot be performed by private surveyors. It has been held by the Bureau that where lands are of such character that they cannot be lotted into suitable tracts without expensive planning, engineering and surveying, it is proper to reject applications therefor. Cf. Madeline Amelia Ring et al., Los Angeles 0129823 etc. (April 25, 1960).

It is also proper to reject small tract applications for lands withdrawn for reclamation purposes where the Bureau of Reclamation objects to the occupation of the lands for small tract purposes. Cf. Frederick W. Goldsmith, A-28704 (August 22, 1961).

1/ See Appendix "A" attached.

Moreover, the appellants have not submitted any positive or substantial evidence showing that the adverse classification of the land is erroneous, and it will not be set aside. Cf. Joseph M. Schuck et al., A-28603 (August 16, 1961).

The refusal to classify the lands for small tract purposes is also in conformity with the Bureau's land conservation program, which provides that no lease, sale, or other disposition of public lands will be made unless they serve a sound public purpose, including the bona-fide needs of the general economy and the improvement of the administration of the public lands.

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5.00 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $85.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

Enclosure

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APPENDIX "A"

		Sacramento	
Forrest Miller		054507	✓
Bessie Miller		054508	✓
Helen E. Hillsman		054914	✓
Lonnie M. Tanner Jr.		056416	✓
Bessie J. Tanner		056417	✓
Dennis W. Jones		056418	✓ Vacated Remanded ltr Dec A-29454 5-5-64
Margaret F. Jones		056419	✓
Bertha Pinkerton		056426	✓
Elisha H. Pinkerton		056427	✓
Ellen E. Dean	affirmed ltr	056432	✓ Dec. A-29454 5-5-64
Cleo V. Loden		056538	✓
Harlen D. Brown		056539	✓
Jack A. McCall		060781	✓
Gertrude Stockton		061424	✓
Wilson Jack Miller		061537	✓
Ralph J. Bushell, Sr.		061542	✓
Joseph J. Sheldon		061564	✓

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

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6.05c
Sacramento 046475
046496
046516
062935
064661

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January 26, 1962

DECISION

Roger L. Alderman Keith W. Alderman Francis Henry Menendez Mabel E. Nichol Roy Brehm	Small Tract Applications

Decision Vacated; Cases Remanded

The appellants listed have appealed from the Manager's decision, dated October 27, 1961, rejecting their above-identified respective small tract applications for the stated reasons that (1) the lands are included in the Amador-Calaveras Management Unit under management for multiple uses including timber production, recreation, water-shed protection, mining and grazing, (2) some land in the area has a recreation potential, (3) the competition for some land in the area for alternate land uses is intense, (4) a study is necessary prior to classification of lands in the area, (5) the proposed sales would not be in the public interest as the remaining portions of the National Land Reserve in the area would be fragmentary and difficult to administer, and (6) disposition of the lands would not serve a sound public purpose.

The Bureau's State Director for California has requested that these cases wherein the applicants occupy the land be remanded to the Land Office at Sacramento for further investigation.

Accordingly, the Manager's decision is vacated insofar as it relates to the above-identified small tract cases, and such cases are remanded to the Land Office Manager at Sacramento, California, through the State Director, for further consideration and appropriate processing.

H.R. Hochmuth

Acting Director

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In reply refer to:
6.05c
Sacramento 053839 058790
053886 059323
054114 060038
054503 060374
055720 060780
057641 063686
058789

January 26, 1962

DECISION

John Edward Oblizalo et al. : Small Tracts, Homestead and Public Sale Applications

Decisions Vacated; Cases Remanded

John Edward Oblizalo, Samuel K. and Isabella G. Talley, and the small tract applicants named in the attached appendix have each appealed from the Manager's decision, dated November 1, 1961, rejecting their respective applications. The applications were rejected for the stated reasons that (1) it would not be in the public interest to transfer title to the lands in issue at this time, (2) such lands should be retained in Federal ownership until the area can be studied, (3) disposition of the lands will not be made until it is clear that the sale or lease will serve a sound public purpose including the satisfaction of needs of the general economy and improvement of the administration of public lands, (4) the proposed construction of Auburn Dam in the area will provide the lands with an intensive recreation potential, and (5) the area is being managed for timber production, recreation, wildlife, watershed protection and other uses.

The Bureau's State Director for California has requested that the small tract occupancy cases, listed in the appendix, be remanded to the Land Office at Sacramento, California, for further consideration. The State Director has also stated that further consideration must be given to Mr. Oblizalo's homestead application (Sacramento 057641) and the Talley public sale application (Sacramento 060374), which conflict with Mr. Sipe's small tract application.

Accordingly the Manager's decision is vacated as to that part relating to the thirteen cases, and such cases are being remanded to the Land Office Manager at Sacramento, California, through the State Director for that State, for further consideration and appropriate action.

HR Hochmuth

Acting Director

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APPENDIX

Small Tract Applicant:	Serial Number Sacramento
Miss Zoe Belieu	053839
Mr. Lawrence F. McAllister	053886
Mr. Ellard C. Schwab	054114
Mr. Roy Gray and Mrs. Zelma Alberta Gray	054503
Estate of Leona M. Werry, deceased c/o Mr. William M. Werry and Mrs. Marcella E. Smolich	055720
Mr. Claude M. Murphy	058789
Mrs. Leonore E. Murphy	058790
Mr. Charles M. Sipes	059323
Estate of Frank Yonash, deceased c/o Mrs. Ester Mary Yonash, Executrix	060038
Mrs. Elaine W. Macy	060780
Mr. Oscar E. Smith	063686

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LAND OFFICE

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 046123
055513
055676
055679

February 5, 1962

DECISION

Jack P. Cory :
Jerry M. Holloway : Small Tract Applications
George H. Black :
Mrs. Mae Black :

Decision Vacated; Cases Remanded

The above listed appellants have appealed from the Manager's decision, dated March 27, 1961, rejecting their respective small tract applications for the stated reasons that (1) all of the lands named in the applications are embraced in a first form reclamation withdrawal for the Central Valley project, (2) leasing the lands would provide only indefinite tenure which would not encourage desirable construction, (3) small tract classification would burden the Bureau with complex cadastral surveys and subdivisional planning, and (4) certain County officials oppose allowance of the applications because it would be difficult to provide the area with local governmental services.

All four appellants state that they are occupying the tracts they seek to lease or purchase, residing in dwellings placed upon mining claims which embraced each tract.

The withdrawal of public lands for reclamation purposes does not of itself make the lands unavailable for small tract disposition. Frederick W. Goldsmith, A-28704 (August 22, 1961). The tracts in issue are located in the S½ sec. 10, T. 32 N., R. 5 W., M.D.M., California. By letter dated June 21, 1961, the Acting Regional Director, Bureau of Reclamation, Sacramento, California, has informed us that upon completion of certain surveys and the preparation of information for utility easements, the Bureau of Reclamation will seek the revocation of the reclamation withdrawal as it relates to the lands in issue.

An examination of the appeal records shows that due consideration was not given to the particular characteristics of the tracts in issue and the circumstances under which the applications were filed. In light of the appeal records, the findings stated in the Manager's decision do not warrant rejecting the appellants' small tract applications.

Accordingly, the Manager's decision is vacated as to those parts relating to the appellants' small tract applications. The appellants' four cases are remanded to the Land Office Manager at Sacramento, California, through the Bureau's State Director for California, for further appropriate consideration and processing.

Richard J. McCormick
Legal Assistant
Division of Appeals

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LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 052096
053423
053424
053780
054605
055741 ✓

DECISION

February 6, 1962

Robert William Young :
Ray J. Ellis :
Bueford L. Herren : Small Tract Applications
Thomas S. Wallace :
Emma Margaret Abreu :
James V. Ronquest :

Decision in Part Vacated; Cases Remanded

The above-listed appellants have appealed from the Manager's decision, dated June 27, 1961, rejecting their respective above-identified small tract applications for lands in the same township in Trinity County, California, for the reason that the applied for lands have been classified for Federal-retention.

The appellants have either constructed dwellings on the tracts they seek or purchased mining claims embracing such tracts on which dwellings had been constructed. Each appellant is occupying the tract named in his small tract application, and some of the tracts have been so occupied for many years.

An examination of each appeal record in issue shows due consideration was not given to the particular characteristics of each applied for tract. Moreover, in the event the lands are determined to be not suitable for transfer to private ownership, as stated in the decision appealed from, the small tract applications should not be rejected without consideration as to whether small tract leases, without options to purchase, are appropriate.

Accordingly, in light of existing conditions, the Manager's decision is vacated as it relates to the appellants' small tract applications cited above. The cases are remanded to the Land Office Manager at Sacramento, California, through the Bureau's State Director for California, for appropriate consideration and processing.

Richard J McCormick

Legal Assistant
Division of Appeals

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Mr. Stennett M. Sheppard, Attorney for Messrs. Ellis and Herren (Regular Mail)
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064635
064649
6.05c

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 7, 1962

Certified Mail
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DECISION

Dwight J. Stalker
Robert D. Rankin
Jackson E. Dennis

: Small Tract Application

Decision Affirmed

The above named persons have appealed from a decision dated June 19, 1961, which rejected their small tract applications for the reason that the applied for land has been classified as unsuitable for small tract purposes because (1) the terrain is too rough and mountainous to be properly developed for homesites, (2) costly surveys would be required, (3) under existing regulations it is not possible to comply with the El Dorado County subdivision ordinances, and (4) the land is indicated to be mineral in character and valuable for exploration for gold.

The appellants filed similar statements of reasons of appeal in which they allege that the land is suitable for small tracts; it is not adaptable to subdivision development; the county is overlooking a chance for additional taxes; and the land is not suitable for mining purposes. The appellants, however, have not submitted any substantial or positive evidence to sustain their contentions.

The Department has consistently held that an applicant for public land who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. It is not enough to controvert facts. The applicant must show by positive and substantial evidence that the land is suitable for the requested use. David C. Bintliff & Co., Inc., A-28274 (July 13, 1960). Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Moreover, if the land is determined to be more valuable for mineral than for small tract purposes, it is within the discretionary authority of the Secretary, or his authorized delegates, to refuse to classify the land for small tract purposes. cf. Lawrence C. Roberts, A-28167 (February 2, 1960).

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $15.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant
Division of Appeals

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Sacramento 052225
053800

February 7, 1962

Certified Mail
Return Receipt Requested

DECISION

Bessie Mae Henderson :
Gilbert H. Edgerton : Small Tract Applications

Decision Affirmed

Mrs. Bessie Mae Henderson and Mr. Gilbert H. Edgerton each have appealed from the Manager's decision, dated June 27, 1961, rejecting their above-identified small tract applications for lands in the southerly part of the same township in Trinity County, California. The decision states the applications named therein were rejected because the applied for lands have been classified for retention in the National Land Reserve under a balanced-use concept in order to preserve public recreational and other values.

There are creeks in the area of each tract in issue herein and the National Land Reserve in the area is reported by qualified Bureau field examiners to be heavily used by the public for such recreational activities as hunting, fishing and camping. The appellants' respective applications show that the only improvement on either tract is a fence on the tract Mr. Edgerton applied for, placed on the land by a mining claimant who Mr. Edgerton assumes has abandoned his claim. The appeal records show no occupancy relating to the tracts in issue.

On appeal, each appellant reasserts an interest in constructing a dwelling on the tracts and residing thereon and Mr. Edgerton states that the tract he applies for would be suitable for small tract development. Neither appellant seeks to refute the Manager's findings as to the recreational potential of the lands in issue.

A small tract classification is properly rejected when the public interest indicates that the land is more valuable for public recreational uses. The Bureau is not required to establish that land which is not classified as chiefly valuable for small tract purposes is unsuited for such purposes; it is sufficient that in the exercise of discretion it is found that the land is not chiefly valuable for such purposes and the applicant who questions the adverse classification must show by substantial, positive evidence that the classification is erroneous in order to have it set aside. Joseph M. Schuck et al., A-28603 (August 16, 1961). The appellants have failed to make a showing that would warrant changing the present classification of the tracts applied for by each party.

Accordingly, the Manager's decision is affirmed as it relates to the appellants' small tract applications.

Mrs. Henderson and Mr. Edgerton are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulation in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each small tract application included in the appeal. If the appeal covers both applications adversely affected by this decision the total filing fee is $10.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. Edwin J. Regan, Attorney for Mr. Edgerton (Certified Mail)
Mrs. Bessie Mae Henderson (Certified Mail)
Mr. Gilbert H. Edgerton (Regular Mail)
SD (California)
LO (Sacramento)
Division of Lands and Recreation
Both Case Files
Perm. File
Attorneys' Reading File
Appeals Reading File
JHO'D

appeal to Sec

049751 } Vacated D
051604 } Remanded A-29501 etc
5-28-64

LO - Sacramento
~~Appeal to Sec~~

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

FEB 26 10 00 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento
049751 etc.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 8, 1962

Certified Mail
Return Receipt Requested

DECISION

I. Ralph Achey et al., :
: Small Tract Applications
: Public Sale Applications
: Homestead Application

Decision Affirmed

The persons listed below have appealed from a decision dated July 20, 1961, which rejected their small tract, public sale, and homestead applications for public lands for the reason that the applied for lands have been classified for retention in the National Land Reserve to be administered under a multiple-use concept for timber management, recreation, wildlife, and access way.

Serial Number Sacramento	Name of Applicant	Kind of Application
049751 ✓	I. Ralph Achey	Small Tract
051604 ✓	Wilbur R. Welker and Charlene M. Welker	Public Sale
053312 ✓	Marlin O. Deen	Public Sale
061962 ✓	Edwin F. Purssell	Small Tract
061964 ✓	Ernest F. Purssell	Small Tract
061965 ✓	Madge F. Purssell	Small Tract
061968 ✓	Gerald E. Purssell	Small Tract
061969 ✓	Willard J. Jones	Small Tract
061972 ✓	Edith Lampert	Small Tract
064197 ✓	Delbert W. Downing	Homestead

Affirmed A-29501 etc 5-28-64

The appellants were informed in detail, in the decision appealed from, that, (1) the lands are suited to almost year-round logging by small timber operators, (2) the California Recreation Plan, Part II, rates this area as the highest in the State for day use by out-of-county residents, (3) thousands of acres are ideally suited for hunting, riding, and hiking, and (4) many streams that course the area are suitable for fishing, swimming, camping, and picnicking sites. They were also advised in that decision that certain of the lands are essential to be retained in Federal ownership for access, management, and the use of the recreation areas.

The appellants were also informed, in the decision appealed from, that under the departmental land conservation program, no leases, sales, or other dispositions of public lands will be made unless the lease or disposition will serve a sound public purpose, including the satisfaction of the bona fide needs of the general economy and the improvement of the administration of the public lands.

The records show that the lands covered by this classification contain approximately 19,125.21 acres of land. These lands contain approximately 110,500,000 board feet of timber valued at $2,763,750.00.

The appellants' allegations are to the effect that the applied-for lands could be better utilized for private purposes than for use by the general public.

The classification report shows that the best interests of the present local economy and the future planned development of the State of California were carefully considered and coordinated with the national public interest and on the basis of that study it was determined that the lands should not be made available for private ownership.

The appellants do not show by any substantial, positive evidence how the depletion of the public's national land reserve into private ownership would serve a sound public purpose or satisfy the needs of the general economy, and the classification of the applied for land, for retention in Federal ownership will not be disturbed. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5. for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $50. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Albert L. Johnson, attorney for Willard J. Jones, I. Ralph Achey and Ernest F., Gerald E., Edwin F., and Madge M. Purssell (Certified Mail)
I. Ralph Achey (Regular Mail)
Edwin F. Purssell (Regular Mail)
Ernest F. Purssell (Regular Mail)
Mrs. Madge M. Purssell (Regular Mail)
Gerald E. Purssell (Regular Mail)
Willard J. Jones (Regular Mail)
Marlin O. Deen (Certified Mail)
Wilbur R. and Charlene M. Welker (Certified Mail)
Edith P. Lampert (Certified Mail)
Division of Lands and Recreation
SD (California)
LO (Sacramento)
Case File
Perm. File
Attorney's Reading File
Appeals Reading File
MHS

DOCKET FILES

In reply refer to:
6.05c
Sacramento 046884 [1]
051075
051515
057644
058134
059139

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 9, 1962

DECISION

Henry J. Garibaldi *et al* : Public Sale
: Small Tracts

Decision Vacated; Cases Remanded

Mr. Garibaldi and the appellants listed below [1] have appealed from the Manager's decision, dated October 20, 1961, rejecting their respective applications for the reasons that it would not be in the best interests of the public to classify any of the lands named in the 69 applications rejected by the decision because (1) some of the lands have a recreational potential requiring that the lands be examined before any can be classified for disposition, (2) some of the lands must be surveyed, (3) some of the lands in the area have been appropriated under the mining laws, and (4) the area is being managed for multiple uses.

The appellants assert, in effect, that the tracts in issue are not the type of lands described in the decision, although such lands may be found in the area. An examination of the appeal records shows that due consideration was not given to the particular characteristics of the tracts in issue in this appeal nor the circumstances under which each application was filed. Moreover, the case records do not show that the lease phase was considered before the small tract applications in issue herein were rejected. The factual situations must be sharply distinguished as they relate to each individual applicant and tract in issue.

---

[1] Mr. Henry J. Garibaldi, public sale application Sacramento 046884.
Mr. Seawell Rivers, small tract application Sacramento 051075.
Mr. Elmer V. Danielson, small tract application Sacramento 051515.
Mr. John Semas, Jr. and Mrs. Elizabeth Semas, amended public sale application Sacramento 057644.
Mr. Walter S. Shackelford and Mrs. Geneva A. Shackelford, public sale application Sacramento 058134
Mr. William J. Vorkoeper, small tract application Sacramento 059139.

Accordingly, the decision of the Manager is vacated as to those parts relating to the appellants' applications. The appellants' cases are remanded to the Land Office Manager at Sacramento, California, through the Bureau's State Director for California, for futher consideration and appropriate processing.

Richard J McCormick

Legal Assistant
Division of Appeals

DISTRIBUTION:
Gilmore & Gilmore, Agents for Mr. Garibaldi (Regular Mail)
Mr. Henry J. Garibaldi (Regular Mail)
Mr. Seawell Rivers (Regular Mail)
Mr. Elmer V. Danielson (Regular Mail)
Mr. John Semas, Jr. and Mrs. Elizabeth Semas (Regular Mail)
Mr. Walter S. Shackelford and Mrs. Geneva A. Shackelford (Regular Mail)
Mr. William J. Vorkoeper (Regular Mail)
SD (California) w/6 case files
LO (Sacramento)
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Appeals' Reading File
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DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 5 2 09 PM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

I[illegible] reply refer to:
6.[illegible]5c
Sacramento 052499 ✓
058506 ✓
060738 ✓

DOCKET FILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 15, 1962

DECISION

Jack Imhoff :
Lt. Col. Vincent J. D'Annibale : Small Tract Applications
Andrew C. Autrey :

Decision Vacated in Part; Cases Remanded

The above-listed appellants have appealed from the Manager's decision, dated November 29, 1961, rejecting their respective above-identified small tract applications for public lands in Trinity County, California. The applications were rejected because (1)all of the lands named in 86 applications rejected by the decision have recreation potential for deer hunting and lie within a multiple land use area, (2) portions of these lands are embraced within powersite withdrawals and (3) local needs for residential sites can better be met from more desirable sites currently available for direct sale pursuant to the public land laws.

On January 19, 1962, the Bureau's State Director for California requested that the above-identified small tract cases be remanded to the Land Office at Sacramento, California, for further consideration in light of the apparent occupancy of the lands in issue by the applicants.

Accordingly, the Manager's decision is vacated as to those parts rejecting the above-identified three small tract applications; and such cases are herewith remanded to the Land Office Manager at Sacramento, California, through the State Director for that State, for further consideration and appropriate action.

Richard J. McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:

Mr. Jack Imhoff (Regular Mail)
Lt. Col. Vincent J. D'Annibale (Regular Mail)
Mr. Andrew C. Autrey (Regular Mail)
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Division of Lands & Recreation
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Perm. File

Attorneys' Reading File
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DOCKET FILES

In reply refer to:
6.05c
Sacramento
047200
047288
047591
052965
053250
054524
054541
055093
056007
059816
060034
060036
060680
061441
062926

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 19, 1962

DECISION

Irene Graham Escura *et al.* : Small Tract Applications

Decision In Part Vacated; Cases Remanded

Mrs. Escura and the fourteen other applicants named in the attached appendix have appealed from the Manager's decision, dated November 28, 1961, rejecting their respective above-identified small tract applications for lands in Shasta County, California. The decision rejected 162 applications, including those of the appellants, for the reasons that (1) the lands applied for by the rejected applications are not suitable for small tract development without the expenditure of sufficient time, authority and funds to develop topographically oriented subdivisions, properly controlled as to building and sanitary codes, (2) some of the lands sought by the 162 applications are withdrawn from such disposition, (3) the areas involved must be examined to determine whether the lands include portions having a recreation potential, (4) such lands should be retained in Federal ownership pending enactment of appropriate new legislation, and (5) local needs for residential sites in the general area can be met through the purchase of more desirable residential parcels currently available for such disposition from the Land Office.

By memorandum dated January 16, 1962, the Bureau's State Director for California has requested that the named cases, wherein the applicants occupy the tracts, be remanded to the Land Office at Sacramento for further investigation.

Accordingly, the Manager's decision is vacated insofar as it relates to the fifteen above-identified small tract cases. These cases are remanded to the Land Office Manager at Sacramento, California, through the State Director for that State, for further consideration and appropriate processing. 1/

Richard J. McCormick

Legal Assistant
Division of Appeals

DISTRIBUTION:
Hon. Clair Engle, United States Senate (Regular Mail)
Mr. Alvin M. Cibula, Attorney for Appellants Escura and Hedges (Regular Mail)
Mr. John A. Spann, Attorney for Appellants Wheeler, Carlson and Lovely (Regular Mail)
Mr. Orr M. Chenoweth, Attorney for Mrs. Strode (Regular Mail)
Mr. Ben Leep, Attorney for Appellants Isenbarger and Hively (Regular Mail)
Each Applicant Named in Appendix (Regular Mail)
SD (California) w 15 case files
LO (Sacramento)
Division of Lands and Recreation
Each Case File
Permanent File
Appeals Reading File
Attorneys' Reading File
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APPENDIX

Small Tract Applicant:	Serial Number:
Mrs. Irene Escura	Sacramento 047200
Mrs. Nora K. Wheeler	047288
Mr. Donald E. Carlson, Sr.	047591
Mr. Rawleigh A. Miller	052965
Mr. Russell N. and Mrs. Eva Wallace	053250
Mr. Horace V. J. Isenbarger	054524
Mr. James S. Hedges	054541
Mr. Charles C. Lovely	055093
Mrs. Mary A. Strode	056007
Mrs. Louise C. Pesotti	059816
Mr. Aliex W. Baker, Sr.	060034
Mr. Aliex W. Baker, Jr.	060036
Mr. Orla A. Hively	060680
Mr. Howard A. Bledsoe	061441
Mr. Ralph D. Ivins	062926

1/ Mr. Aliex W. Baker, Sr. (Sacramento 060034) and Mr. Aliex W. Baker, Jr. (Sacramento 060036) each submitted excess appeal filing fees in the amounts of $5.00. Mr. Baker, Sr. and Mr. Baker, Jr., will each receive a refund of $5.00 in due course.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 053555
054355
057818

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 7 10 00 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DOCKET FILES

DECISION

February 21, 1962

Clarence H. Davis :
Frank F. Myers :
Edward M. Jordan :
:

Small Tract Applications

Decisions Vacated in Part: Cases Remanded

The above listed appellants have appealed from the Manager's decision, dated November 27, 1961, rejecting their respective above-identified small tract applications for public lands in Shasta County, California. The decisions rejected 18 applications, including those of the appellants, for the stated reasons that, (1) some of the lands sought are not suitable for small tract development without the expenditure of time, authority and money to develop topographically oriented subdivisions, properly controlled by local building and sanitary codes, (2) an examination of National Land Reserve in the area must be made to determine whether portions thereof have a recreation potential warranting Federal retention, (3) local needs for residential sites in the area can be met through the direct purchase of more desirable residential parcels now available for direct purchase upon application to the Land Office, and (4) the public lands in the area should be retained in Federal ownership pending possible enactment of appropriate new legislation.

On January 24, 1962, the Bureau's State Director for California requested that the above-identified small tract cases, involving unauthorized occupancy, be remanded to the field to permit further investigation of these applications.

Accordingly, the Manager's decision is vacated as to those parts rejecting the three above-identified applications. The named appellants' cases are remanded to the Land Office Manager at Sacramento, California, through the Bureau's State Director, for further appropriate consideration.

Richard J. McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:
Hon. Clair Engle, United States Senate (Regular Mail)
Hon. Harold T. (Bizz) Johnson, House of Representatives (Regular Mail)
Hon. John E. Moss, House of Representatives (Regular Mail)
Mr. Fred H. Snook, Attorney for Mr. Clarence H. Davis (Regular Mail)
Mr. Clarence H. Davis (Regular Mail)
Mr. Frank F. Myers (Regular Mail)
Mr. Edward M. Jordan (Regular Mail)
SD (California) w/3 case files
LO (Sacramento)
Division of Lands and Recreation
Each Case File
Permanent File
Appeals Reading File
Attorneys' Reading File
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 046020 etc.

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 12 10 00 AM 1962
BUREAU OF LAND MANAGEMENT
LAND OFFICE

February 27, 1962

DECISION

DOCKET FILES

Herbert Doan, et al. : Small Tract Applications

Decisions Vacated
Cases Remanded

Herbert Doan and others listed in the attached Appendix have appealed from a decision of the Manager, dated October 20, 1961, which rejected their small tract applications. The Manager listed several reasons why the lands applied for were not suitable for small tract development, indicating that one or more of the reasons applied to each application included in the decision.

An examination of the record shows, however, that due consideration was not given to the particular characteristics of the land applied for in each case and the circumstances under which the separate applications were filed. Accordingly, the decision of the Manager is vacated as to the applications listed in the attached Appendix and the case records are remanded to the Manager, through the Bureau's California State Director, for further individual consideration and appropriate action.

Richard J. McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:

Hon. Clair Engle, United States Senate (Regular Mail)
Each appellant listed in the attached appendix (Regular Mail)
SD (California)
LO (Sacramento)
Division of Lands and Recreation
Case File
Perm. File
Attorney's Reading File
Appeals Reading File
LLM

APPENDIX

Appellants	Serial Numbers Sacramento
Herbert Doan	046020
Clarence L. Shirley	046109
Leonard E. Hohmier	048300
Donald Woods	048566
Kay D. Walton	049167
Lillian E. Wright	049169
Bernard E. Fugatt, Sr.	049170
John M. Langhout	050678
Mary Upton	051859
L. P. Gizinos	051916
Mrs. Hugh P. Brewer	053160
Douglas S. Vanderbeck	053282
Henry Spliethof	054113
Gladys E. Pringle	054922
Von J. Watson	058949
Marjorie M. Timmerman	059587
Robert M. Weigart	061550

DOCKET FILES

In reply refer to:

6.05c
Sacramento 057254

3/21 noted

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 12 10 00 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 28, 1962

Certified Mail
Return Receipt Requested

DECISION

William J. Tomkin : Small Tract Application

Decision Affirmed

William J. Tomkin has appealed from a decision, dated October 13, 1961, rejecting his small tract application for Lot 10, sec. 24, T. 11 N., R. 10 E., M.D.M., for the reason that the lot, among other lands, had been classified as unsuitable for small tract purposes because (1) the parcel is an integral part of the Placer-El Dorado multiple use management area containing valuable commercial timber; (2) disposal of the land would impair watershed protection, game cover, and expanding public recreation use; (3) the County of El Dorado is opposed to disposing of the land under the Small Tract Act since the Bureau cannot conform with the county subdivisional ordinance; (4) there are numerous known unpatented mining locations on the lands and they may be valuable for gold, and (5) disposition of the lands for small tract purposes would not serve a sound public purpose. The classification was based upon an examination of the land by qualified Bureau personnel.

The appellant asserts, in substance, that the tract involved is a narrow strip between the highway and his property; has no timber of any value; is of no use to anyone except to him for an access to the highway from his patented mining claim; and that he is willing to accept title to the land subject to any mining claim.

The Department has consistently held that it is proper to refuse to classify lands for small tract purposes where the public interest requires that the lands remain in public ownership for multiple use purposes. Cf. Arabelle Hoover et al., A-28430 (Jan. 19, 1961), or where the land involved is included in unpatented mining claims, Edward J. Rowley, A-28146 (May 24, 1960). Furthermore, the refusal to classify the land for small tract purposes conforms with the present land conservation program which provides that, leases, sales, or other disposition of public lands will not be made unless such transaction will serve a sound public purpose, including the satisfaction of a bona fide need of the general economy and improving the administration of public land. See 43 CFR 1960 Supp. 257.2(a).

The appellant has not presented any substantial, positive evidence that the classification action is erroneous, and it will not be disturbed. Cf. Joseph M. Schuck et al., A-28603 (August 16, 1961). Accordingly, the decision appealed from is affirmed.

William J. Tomkin is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Legal Assistant,
Division of Appeals

Enclosure

DISTRIBUTION:

William J. Tomkin (Certified Mail)
Division of Lands and Recreation
SD (California)
LO (Sacramento)
Case File
Perm File
Attorney's Reading File
Appeals Reading File
RLE

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 13 10 00 AM 1962
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 049221 etc.

DOCKET FILES

SR Noted

February 28, 1962

DECISION

Violet M. Larson et al : Small Tract Applications

Decisions Vacated
Cases Remanded

Violet M. Larson and others listed in the attached Appendix have appealed from a decision of the Manager, dated October 20, 1961, which rejected their small tract applications. In his decision the Manager listed various reasons why lands may not be suitable for small tract development and stated that one or more of these reasons applied to the tract described in each of the applications rejected.

An examination of the records indicates that due consideration was not given to the particular characteristics of the individual tracts applied for and the circumstances under which each of the applications was filed. Accordingly, the decision appealed from is vacated insofar as it applies to the applications included in this decision and the case records are remanded to the Manager, through the Bureau's California State Director, for further individual consideration and appropriate action.

Richard J McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:
Honorable Clair Engle, United States Senate
Honorable Harold T. Johnson, House of Representatives
Mr. David W. Packard, Attorney for John T. Lindsey (Regular Mail)
Each applicant listed in the attached Appendix (Regular Mail)
SD (California)
LO (Sacramento)
Case File
Permanent File
Appeals Reading File
Attorneys' Reading File
Division of Lands and Recreation
LLM

APPENDIX

	Sacramento
Violet M. Larson	049221
Bert B. Butler	050771
Espie W. Kanthack	050968
CWO Walter L. Bailey	051007
George H. Scoonover	051035
[illegible]old W. Ayers	051056
Lura A. Heinrich	051297
John C. Farrell, Jr.	051300
Joseph P. Farrell	051308
[illegible]ohn C. Farrell, Sr.	051313
John T. Thompson	051748
John T. Lindsey	053337
Fannie Biers	053779
Ovid L. and Helen S. Holmes	054900
Augustus L. Cox	055097
R. D. Rakestraw, Sr.	055160
Thomas W. Birch	055161
Edward C. Kolstad	055230
Raymond D. Rakestraw, Jr.	055273
Ira E. Hayton	055278
George N. Wallace	055925
Hermas and Adelma Egbert	061980
Ocy Morrill	061981

	Sacramento
Walter R. Smith	065977
Fred C. Sage	065980
Mrs. James R. Smith	065982
Carroll D. Wright	065989

appeal to Sec

affirmed - Ltr due 2-17-64

A-29529

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 19 10 00 AM 1962
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 052611
057553

March 8, 1962

Certified Mail
Return Receipt Requested

DECISION

Maxwell N. Hollander :
Ann A. Jordon : Small Tract Applications

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, dated November 27, 1961, rejecting their own and 15 other small tract applications and one public sale application. In his decision, the Manager stated that the lands embraced by the various applications have been examined and lay within a larger block of public lands having a high recreation potential, but he added that supplemental examinations must be made and the data collected analyzed before it can be determined whether or not the lands should be sold or retained in Federal ownership. The Manager stated that the topography of much of the land for which applications have been filed is such that costly complex surveys would be necessary before the land could be sold pursuant to the Small Tract Act, and that the lands applied for cannot be developed properly under existing laws and should be retained in Federal ownership pending the enactment of appropriate new legislation. The Manager noted that other tracts of public land in the vicinity are currently being offered for direct sale at public auction, affording the applicants an opportunity to acquire homesites.

In their appeals, the applicants allege, in essence, that the tracts for which they have applied are suitable for homesites, with electricity and other community services readily available, and are located in an area suitable only for residential development.

The statements of reasons submitted by the appellants do not justify a modification of the Manager's decision insofar as it applied to their applications. An applicant for public lands who appeals from an adverse classification of the lands has the burden of showing, by submitting substantial affirmative evidence, in what respect the classification of the land for which he has applied is incorrect. Cf. Joseph M. Schuck et al., A-28603 (August 16, 1961). The appellants' assertions do not disprove the basic findings of the Manager.

Accordingly the decision of the Manager is affirmed insofar as it applies to the appellants' applications.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Hon. Clair Engle, United States Senate (Regular Mail)
Maxwell N. Hollander (Certified Mail)
Ann A. Jordon (Certified Mail)
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appeal to Secy
Vacated by ltr. DLO - Sacramento
A-29627 - 2-17-64

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 19 10 00 AM 1962
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 062457, etc.

March 12, 1962

Certified Mail
Return Receipt Requested

DECISION

Milton E. Harrison, et al. : Small Tract Applications

Decisions Affirmed

Milton E. Harrison and others listed in the attached appendixes have appealed from a decision of the Manager, dated November 28, 1961, which rejected their small tract applications for reasons which include, *inter alia*, the finding that the lands have a high recreational potential and it is not in the public interest that they be made available for individual disposition. This finding is bottomed on the land conservation program announced February 14, 1961, requiring that lands be retained in Federal ownership where the public interest would demand.

In their statements of reasons, appellants listed in Appendix A generally offer selfserving arguments to the effect that they have planned a "community" to be developed on the applied for lands which, when complete, will comply with the standards as prescribed by the State and local building codes. Appellants also discuss the advantages of such a plan in terms of tax benefits to the general economy of the area.

Appellants listed in Appendix B generally offer self-serving arguments to the effect that there appears to be no reason why the specified applications should not be allowed or that an extreme hardship will result by their being denied the lands applied for.

An applicant for public lands, who appeals from an adverse classification of the land, has the burden of showing, by submitting substantial affirmative evidence, in what respect the adverse classification is in error and that the land has greater value for the purpose requested in the application. Joseph M. Schuck et al., A-28603 (August 16, 1961). This the appellants have not done. Appellants' uncorroborated assertions do not disprove the basic finding of the Manager, that disposition of the land under the Small Tract Law would not be in the public interest at this time. Therefore, the Manager's decision is affirmed insofar as it applies to the appellants' applications.

Appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Each Appellant (Certified Mail)
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APPENDIX A

	Sacramento
Milton E. Harrison	062457 ✓
Jimmie D. Thompson	062460 ✓
Dorman J. Silvers	065717 ✓
Cyril A. Davis	065719 ✓
Keith D. Bogue	065720 ✓
Warren H. Davis	065722 ✓
David H. Tees	065725 ✓
George S. Pujol	065732 ✓
James G. Dignan	065736 ✓
Bernard D. Walsh	065740 ✓
Adelbert A. Sigwart	065953 ✓
Frank A. Lindberg	065959 ✓

APPENDIX B

	Sacramento
Maynard L. Vanderpool	053256 ✓
Richard D. Peters	053781 ✓
Abigail M. Burke	055562 ✓
Joey B. McCall	058044 ✓
Elsie H. Townsend	061568 ✓

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05e
Sacramento 058045

DOCKET FILES

March 13, 1962

DECISION

Donna L. Richardson : Small Tract Application

Decision Vacated
Case Remanded

Mrs. Donna L. Richardson has appealed from a decision of the Manager, dated October 20, 1961, rejecting her own and 27 other small tract applications, an Indian allotment application, a homestead application, and a large number of public sale applications. In his decision, the Manager listed several reasons why public lands in the area embraced by the various applications are not suitable for sale or entry at the present time, indicating that one or more of the reasons applied to the lands described in each of the applications included in the decision.

An examination of the record discloses, however, that due consideration was not given to the particular characteristics of the land for which Mrs. Richardson has applied and the circumstances under which her application was filed. Accordingly, the decision of the Manager is vacated insofar as it rejects the appellant's application and the case record is remanded to the Manager, through the Bureau's California State Director, for further individual consideration and appropriate action.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

DISTRIBUTION:

Mr. Orrin K. Airola, Attorney for the appellant (Regular Mail)
Mrs. Donna L. Richardson (Regular Mail)
Division of Lands & Recreation
SD (California), with case record Sacramento 058045
LO (Sacramento)
Case File
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Appeals Reading File
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 065131

March 13, 1962

Certified Mail
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DECISION

Paul J. Riggins	:	Small Tract Application

Decision Affirmed

Paul J. Riggins has appealed from the decision dated April 24, 1961 which rejected his small tract application for a 5-acre tract and allowed the Siskiyou Shooters Association application for a 32.88-acre tract (including the aforementioned tract) under the Recreation and Public Purposes Act, for the reason that the land was classified as more suitable for disposition under the Recreation and Public Purposes Act.

The Siskiyou Shooters Association filed its application on April 1, 1957, to purchase the land, for use as a community small arms range by local sportsmen, law enforcement, and national defense agencies. The tract contains a dwelling which is located upon an old unpatented mining claim that was relinquished conditionally on June 2, 1958. On November 17, 1960 the appellant filed his small tract application for the land covered by the dwelling, which he claims he has purchased.

The appellant alleges that the gun club **does not need the dwelling site for** its purposes therefore his application should be allowed under the Small Tract Act. He also protests the appraised value of the tract which he asserts is too low.

The gun club has indicated that the buildings on the site will be utilized in its development program.

In this case, the use authorized by the Land Office would not only serve the general public and the police departments in the surrounding area, it would also foster an activity that is essential to the national defense.

With respect to the appellant's protest as to the appraised value of the land, the value placed on the land for the purposes for which it is intended to be used under the recreation and public purposes act was established in accordance with the applicable law and regulations, and Bureau procedures. The appellant has presented no positive or substantial evidence that the appraised value placed on the land is erroneous.

Furthermore, the Department has consistently held that a small tract classification is properly refused when the public interest indicates that the land is more valuable for public recreational uses. Joseph M. Schuck et al., A-28603 (August 16, 1961).

Accordingly, the decision appealed from is affirmed.

Paul J. Riggins is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations to 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is the Siskiyou Shooters Association, 748 North Street, Yreka, California.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Paul J. Riggins (Certified Mail)
Siskiyou Shooter Association (Regular Mail)
Division of Lands and Recreation
SD-(California)
LO (Sacramento) ✓
Case File
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Appeals Reading File
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 053988

DOCKET FILES

March 15, 1962

DECISION

William G. Meagher : Small Tract Application

Decision Vacated
Case Remanded

William G. Meagher has appealed from a decision of the Manager, dated November 28, 1961, rejecting his small tract application along with three similar applications and 23 public sale applications. The Manager held that it would not be in the public interest to sell any of the applied for land pending the completion of an inventory and evaluation of the National Reserve Lands to determine its best use.

An examination of the record disclosed that the Manager failed to take into consideration the particular characteristics of the tract for which Mr. Meagher has applied and the circumstances under which the application was filed. Accordingly, his decision is vacated insofar as it applies to the appellant's application and the case is remanded to the Manager, through the Bureau's California State Director, for further consideration and appropriate action.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

DISTRIBUTION:

Mr. William G. Meagher (Regular Mail)
Mr. Lewis P. May, Attorney at Law (Regular Mail)
Division of Lands and Recreation
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Attorney's Reading File
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In reply refer to:
6.05c
Sacramento 051184

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

March 16, 1962

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SACRAMENTO, CAL.
MAR 26 10 09 AM 1962

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DECISION

Buford L. Hale : Small Tract Application

Decision Affirmed

Buford L. Hale has appealed from a decision of the Manager, dated November 28, 1961, rejecting his small tract application.[1] The Manager held that none of the lands applied for should be sold pending the completion of an inventory and evaluation of the public lands due to the public recreation potential of much of the land and because much of the land has been occupied under the mining laws.

In his appeal, the applicant asserts, in essence, that the land is without recreational value, contains no valuable minerals or timber, and that it is an isolated tract unfit for farming.

When a small tract application is rejected because the land applied for has been classified by the Bureau of Land Management as unsuitable for small tract development and the applicant elects to appeal, the burden rests with the applicant to show, by submitting substantial affirmative proof, that the classification is erroneous. Cf. Joseph M. Schuck et al., A-28603 (August 16, 1961). The unsupported assertions made by Mr. Hale fall far short of making such a showing. Hence, the classification will not be modified.

Moreover, in his application, filed September 14, 1955, Mr. Hale declared that the tract for which he was applying was not occupied. The record shows, however, that the land is occupied and that a mining claimant had constructed a house and other improvements on the land at the time Mr. Hale filed his small tract application.

Accordingly, the decision of the Manager is affirmed insofar as it rejects Mr. Hale's application.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

---

[1] Three other small tract applications and 23 public sale applications were also rejected in the same decision.

If an appeal is taken the adverse party to be served is:

Mr. Richard I. Jones
Box 67
Newcastle, California.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. Buford L. Hale (Certified Mail)
Mr. Richard I. Jones (Regular Mail)
SD (California)
LO (Sacramento) ✓
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appeal to Sec
affirms Ltr Decision A-29568 9-17-63

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 054334

April 6, 1962

Wlg
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DOCKET FILES

DECISION

Luella Hedges : Small Tract Application

Decision Affirmed

Luella Hedges has appealed from a decision of the Manager, dated November 28, 1961, which rejected her small tract application for reasons which include, *inter alia*, the finding that the lands have a high recreational potential and it is not in the public interest that they be made available for individual disposition. This finding is bottomed on the land conservation program announced February 14, 1961, requiring that lands be retained in Federal ownership where the public interest would demand.

The appellant states that the lands embraced in her application are adjacent to a ten-acre tract originally contained in a mining claim purchased by her husband on or about November 5, 1956. Appellant claims that contest proceedings were initiated against the mining claim during the year 1959, at which time she and her husband were told that if they did not contest the action, they would receive, upon the proper filing, at least five acres of the lands by patent under the Small Tract Act. She further states that they did not contest the action and that her husband has applied for five acres of the same lands under the Small Tract Act.

The appellant's statements regarding the contest proceedings on lands adjoining the tract here concerned are not material to the issue of the proper classification of the lands applied for.

An applicant for public lands, who appeals from an adverse classification of the land, has the burden of showing, by submitting substantial affirmative evidence, in what respect the adverse classification is in error and that the land has greater value for the purpose requested in the application. *Joseph M. Schuck et al.*, A-28603 (August 16, 1961). Appellant's statements do not disprove the basic finding of the Manager, that disposition of the land under the Small Tract Law would not be in the public interest at this time. Therefore, the Manager's decision is affirmed insofar as it applies to the appellant's application.

Luella Hedges is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See

LO
Sac.

the enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Luella Hedges (Regular Mail)
Alvin M. Cibula, Attorney for Appellant (Certified Mail)
Division of Lands and Recreation
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APR 16 2 07 PM 1962

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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 055675
051651

BUREAU OF
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April 10, 1962

DOCKET FILES

DECISION

Dan K. Conger
Loring C. Cooper

Small Tract Applications

Decision Vacated. Cases Remanded

Dan K. Conger and Loring C. Cooper have appealed separately from a decision dated November 28, 1961, which rejected their small tract applications. In the decision, the Manager stated that some of the lands for which the subject and other applications had been filed were withdrawn, others required further examination and analysis to determine their recreational potential; that there are mining claims covering some of the lands; and that the lands cannot be developed properly under existing laws and should be retained in Federal ownership pending the enactment of new legislation.

The appellants assert that the general statements in the decision appealed from, relating to the unsuitability of the lands in the area under consideration for small tract development do not apply to the lands they seek. They further assert since they made application for the subject lands on an individual basis, they are entitled to at least specific and individual consideration, with a determination concerning the respective lands applied for by them.

An examination of the record shows that due consideration was not given to the particular characteristics of the land applied for by appellants and the circumstances under which these separate applications were filed. Accordingly, the decision of the Manager is vacated and the case records are remanded to the Manager, through the Bureau's California State Director for further individual consideration and appropriate action.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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Loring C. Cooper (Regular Mail)
Regan and Kennedy, Attorneys for Appellant Cooper (Regular Mail)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 054162

April 10, 1962

DOCKET FILES

DECISION

George William Randall : Small Tract Application

Decision Vacated
Case Remanded

George William Randall has appealed from a decision of the Manager, dated November 1, 1961, rejecting his small tract application. The Manager held that the land applied for should be retained in Federal ownership as it is located within the Placer-El Dorado Multiple Use Management Area which has been established to manage timber production, wildlife, watershed protection and other uses, and because it is potentially valuable for recreational uses.

An examination of the record discloses that due consideration was not given to the particular characteristics of the land for which Mr. Randall has applied and the circumstances under which the application was filed. Accordingly, the decision of the Manager is vacated and the case record is remanded to the Manager, through the Bureau's State Director for California, for further consideration and appropriate action.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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Whipp

In reply refer to:
6.05c
Sacramento 057280,etc.

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

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April 23, 1962

DOCKET FILES

DECISION

Hazel M. Maples, et al. : Small Tract Applications

Decisions Vacated; Cases Remanded

Hazel M. Maples and 7 others[1] have appealed from a decision of the Manager, dated November 1, 1961, rejecting a large number of public sale, small tract, homestead and recreation and public purposes applications. The Manager held that it would not be in the public interest to transfer title to the public lands applied for by the various applicants until a detailed study of the area has been made.

An examination of the case records shows that the Manager failed to take into consideration the particular characteristics of the tracts for which the appellants' small tract applications were filed and the circumstances under which the applications were filed. Accordingly, his decision is vacated insofar as it applies to the appellants' applications and the case records are remanded to him, through the Bureau's California State Director, for further consideration and appropriate action.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

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Each Appellant (Regular Mail)
Chamberlain and Chamberlain, Attorneys at Law (Regular Mail)
H. S. Gilmore, Agent for William L. Howard (Regular Mail)
Division of Lands and Recreation
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LO (Sacramento)
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[1] Sacramento 057280 Hazel M. Maples, 057281 Hugh L. Maples, 057282 Orin M. Prouty, 058785 Richard A. Murphy, 058786 John M. Murphy, 060027 Mabel S. McAllister, 060306 William L. Howard, 062580 Elmer Fredlund.

appeal to Sec 6-12-62
affirmed lto dec. A-29596
6-18-63
XHC

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APR 30 10 00 AM 1962

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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 044769
048028

April 23, 1962

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DECISION

Raoul H. Cyr :
Edmond J. Cyr : Small Tract Applications
:

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, dated June 19, 1961, rejecting their own and 9 other small tract applications. The Manager held that the land has been examined and that it has been determined that it should be retained in Federal ownership for the management of multiple resources, including timber, wildlife, recreation use, mining, and watershed protection. He stated that the land is an integral part of the Sacramento District Timber Management Plan, and that portions of the land have been appropriated under the mining laws. The Manager also reported that the Calaveras County Planning Commission is opposed to the allowance of the applications unless certain stipulations are met and that this cannot be done in the area where the appellants' applied-for tracts are located.

In their appeal, the applicants allege, in essence, that the Manager's decision is wholly arbitrary and is not based on any factual material. They state that the tracts have been mapped and held ready for disposition to qualified small tract applicants, and that only the slow practices of the Bureau in clearing the conflicting mining claims and classifying the land have prevented the disposition of the tracts years ago. They state that the tracts applied for can be reached from roads already in existence. They assert the tracts are not essential to the Sacramento District Timber Management Plan as they contain only a few inferior trees and that, as the tracts border private lands on the south and east, retention of the tracts for timber management purposes would be unsound. They contend the stipulations imposed by the Calaveras County Planning Commission can be met as they would be required to meet the identical sanitation and building regulations imposed by local or State authorities upon those persons living on patented land in the vicinity of these tracts. They ask the Director to consider the years that have passed since the applications were filed and the work already performed by the Land Office in preparing the lots for small tract development, contending that the money spent in this work cannot now be considered justifiable waste. In conclusion, the appellants argue that the provisions of the Small Tract Act and the bulletins issued by the Bureau of Land Management encouraged them to believe the tracts would be offered to them, and that they, in good faith, filed their applications in accordance with that belief.

The record shows that the tracts applied for, although located near privately-owned land, are a part of a larger block of public land and that an evaluation of several on-the-ground examinations of the land led the Manager to conclude that a classification of the land for small tract development would not be consistent with the Bureau's current classification standards. In these circumstances, the burden rested with the appellants to show, through the submission of substantial affirmative proof, that the conclusions reached by the Manager were incorrect. Joseph M. Schuck et al., A-28603 (August 16, 1961). The unsupported assertions made by the appellants fall short of making such a showing.

Moreover, there is in the record a copy of a letter to the Bureau of Land Management from the Calaveras County Planning Commission wherein the Commission states it is opposed to the allowance of any small tracts in the County unless the Bureau will, in the absence of special permission from the Commission, subdivide the public land to be sold to small tract applicants so as to provide for roads with a minimum width of 50 feet and grades of not over 10 per cent, provide for a minimum building set back of 20 feet from property lines, and insure water supplies and sewerage disposals which will meet the requirements of the State Board of Health and the County Sanitarian. The Commission explained that these safeguards are necessary in the absence of zoning ordinances and building codes for the County. The Bureau, however, cannot meet these requirements. Therefore, it would not be consistent with the Bureau's policy of full cooperation with local governmental bodies to allow the tracts to be sold to the appellants under the present circumstances. (43 CFR 257.2).

The record shows that Raoul Cyr has, since 1951, intermittently occupied a cabin on the tract for which he has applied. He has acquired, however, no right or interest in the tract by his unauthorized occupancy, Regulation 43 CFR 296.5, and, in the circumstances of this case, is entitled to no equitable consideration in the classification of the tract he has occupied. Mr. Cyr first occupied the land as a "tenant" of Fred B. Feighner, who claimed the land under a mining location. However, within months after renting from Feighner, Mr. Cyr filed his small tract application, acknowledging the United State's ownership of the land.

Accordingly, the decision of the Manager is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the filing fee will be $5.00 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Hon. Clair Engle (Regular Mail)
Hon. Thomas H. Kuchel (Regular Mail)
Hon. Harold T. Johnson (Regular Mail)
Mr. Raoul H. Cyr (Regular Mail)
Mr. Edmond J. Cyr (Regular Mail)
H. S. Gilmore, Agent for the Appellants (Certified Mail)
Division of Lands and Recreation
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In reply refer to:
6.05c
Sacramento 063430
065485

DEPT. OF INTERIOR
SACRAMENTO, CAL.
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DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 18, 1962
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BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DECISION

DOCKET FILES

John H. Rogers, Jr. : Small Tract Applications
Charlotte Leach :

Decision Affirmed

The above-named parties have appealed from a decision of the Manager, dated June 19, 1961, rejecting their own and 9 other small tract applications. The Manager held the land has been examined and that it has been determined it should be retained in Federal ownership for the management of multiple resources, including timber, wildlife, recreation use, mining, and watershed protection. He stated that the land is an integral part of the Sacramento District Timber Management Plan, and that portions of the land have been appropriated under the mining laws. The Manager also reported that the Calaveras County Planning Commission is opposed to the allowance of the applications unless certain stipulations are met and that this cannot be done in the area where the appellants' applied for tracts are located.

The appellants assert, in essence, that the tracts for which they have applied are unsuitable for agriculture or grazing, and have little or no value for mining or timber. They state that the wildlife found in the area is limited to animals which readily adapt themselves to living in inhabited areas, adding that rodent and rattlesnake control will be in the public interest. Theyccontend that small tract development of the area should be permitted because the land creates a peninsula of public land extending into privately owned lands, and that due to the climate, topography and location of the public land, is is well suited for retirement residences or summer cabins.

The record shows that the area wherein the applied for small tracts are located has been examined and that, in view of the findings of the examinations, the allowance of the applications would be inconsistent with the Bureau's current land classification standards. Hence the applications were properly rejected.

Also included in the record is a letter from the Calaveras County Planning Commission to the Bureau of Land Management. In this letter, dated February 6, 1961, the Commission registered its opposition to the allowance of small tracts in the County unless the Bureau will, in the absence of special permission from the Commission, subdivide the public land sold to small tract applicants to provide for roads with minimum widths of 50 feet and grades not over 10%, provide for a minimum building set back of 20 feet from property lines, and insure water supplies and sewerage disposals which will meet the requirements of the State Board of Health and the County Sanitarian. The Commission explained that these safeguards are necessary in the absence of zoning ordinances and building codes for Calaveras County. The Bureau, however, cannot meet these requirements. Therefore, it would not be consistent with the Bureau's policy of full cooperation with local governmental bodies to allow the tracts to be sold to the appellants under the present circumstances.

Accordingly the decision of the Manager is affirmed.

Each of the appellants is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5 for each application upon which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

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DISTRIBUTION:
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Hon. Thomas H. Kuchel, U.S. Senate
Hon. William S. Mailliard, House of Representatives
Mr. Hugh L. Smith, Jr., Attorney for the appellants (Certified Mail)
Mr. John H. Rogers, Jr. (Regular Mail)
Mrs. Charlotte N. Lemon (Regular Mail)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 058787
058788

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SACRAMENTO, CAL.
MAY 29 2 24 PM 1962
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

May 18, 1962

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DECISION

Joan L. Murphy
Kenneth E. Murphy : Small Tract Applications

Decisions Affirmed

The above-named applicants have appealed from a decision, dated February 13, 1962, which rejected their above-identified small tract applications for the reasons that the applied for lands have been classified as unsuitable for small tract purposes, because (1) the applied for lands are located within a multiple use management area, and (2) the topography of the lands is such that to properly develop the land for homesites would require costly surveys and construction.

In their statements of reasons, appellants assert that they and their predecessors in interest have for many years been in the actual and exclusive occupancy and possession of the lands described in their applications and have erected improvements thereon. Appellants further assert that they were induced to relinquish all rights and claims acquired under the mining laws by the assurance that such procedure was necessary to classify the lands for small tract purposes.

An examination of the records of each case discloses that the original applications of the appellants fell within old lot 5, T. 13 N., R. 10 E., Sec. 8 MDM. Subsequent relotting placed both applications in SW¼NW¼SE¼ of the same section, township and range. Several field reports, including one of an examination conducted March 5, 1962, reveal that there is no occupancy of SW¼NW¼SE¼. Rather occupancy exists only on an adjacent lot, number 15 which is embraced in an application filed by Lenore Murphy, Sacramento Serial Number 038790. While no information appears which determines to whom improvements found on lot 15 belong, such improvements are clearly not occupied by appellants. Accordingly, the arguments presented by appellants regarding occupancy cannot be found as sufficient to require further consideration of the decision appealed from.

Accordingly, the decision appealed from is affirmed.

Appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee for each application is $5. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

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Chamberlain and Chamberlain, Attorneys for Appellants (Certified Mail)
Joan L. Murphy (Regular Mail)
Kenneth E. Murphy (Regular Mail)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 058044

June 26, 1962

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DECISION

Joey B. McCall : Small Tract Application

Decisions of November 28, 1961, and March 12, 1962,
Vacated in Part,
Case Remanded

By decision of March 12, 1962, this office affirmed a decision by the Sacramento Land Office Manager, dated November 28, 1961, which rejected the application filed by Mr. Joey B. McCall for a small tract of public land. Subsequently, a statement of reasons for an appeal to the Secretary was timely filed. [1]

In his appeal to the Secretary, appellant presents argument to the effect that the subject tract was originally a mining claim with improvements thereon which he purchased at the time of his filing under the small tract act.

In view of this additional information, which raises substantial questions regarding occupancy and the rights of appellant, further consideration of appellant's application is warranted.

Accordingly, the Manager's decision of November 28, 1961, and our decision of March 12, 1962, as they apply to Mr. Joey B. McCall, are hereby vacated.

---

[1] Even though an appeal to the Secretary has been taken from a Bureau decision, the Bureau may reconsider and change its decision after such appeal is filed, provided there are no adverse parties involved. Departmental instructions of March 21, 1946.

The case is remanded to the Manager, Sacramento Land Office, through the Bureau's State Director for California for further processing.

Assistant Director

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Mr. Joey B. McCall (Regular Mail)
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SACRAMENTO, CAL.

AUG 13 1 51 PM 1962

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LAND MANAGEMENT
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 060027

August 3, 1962

DOCKET FILES

Certified Mail
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DECISION

Mabel S. McAllister : Small Tract

Decision Affirmed

Mabel S. McAllister has appealed from a decision of the Chief, Lands Section, dated June 22, 1962, rejecting her small tract application. By a previous decision of the Bureau's Division of Appeals, the application, which had been rejected by an earlier decision of the land office, was remanded for further consideration of the appellant's application.

The decision herein appealed from was based upon the following: that the appellant does not need the land to accommodate buildings appurtenant to her residence constructed on an adjacent patented tract; that access problems to the patented tract would not be alleviated by ownership of the subject land; that the land is an integral part of a timber management unit; that it is presently under lease for grazing; and that the highest and best use of the land is for timber production, general public recreation and grazing.

The appellant states that the tract applied for contains the driveway to the residence on the patented tract, and appurtenant outbuildings; that removal of them would create a hardship; that the grazing lessee would relinquish his interest; that a clearing of the tract had been made by the appellant for fire protection; and that there is no timber on the land.

The classification report is adverse to the classification of the subject land for sale or lease under the Small Tract Act for reasons which formed the grounds for the decision appealed from. The appellant has submitted no positive evidence that the report was in error. In the absence of a positive showing that some error has been committed in making a field report, upon which the classification is based, or some vital evidence overlooked, or some other valid reason presented, a classification report will not be disturbed. David J. Taylor A-27350. (August 13, 1956).

The record indicates that the decision is correct, and it is hereby affirmed.

Mrs. McAllister is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Appeal to Sec. LO Dec.
Dismissed A 29789 10-31-62 3HC

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

AUG 27 10 00 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 058789
058790

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

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DECISION

August 17, 1962

Claude M. Murphy :
: Small Tract Applications
Lenore E. Murphy :
:

Decision Affirmed

Claude M. Murphy and Lenore E. Murphy have appealed from separate decisions of the Chief, Land Section, dated May 14, 1962, which rejected in its entirety the small tract application of the former and approved for lease only the application of the latter for the reason that the applied for land has a high recreational potential. The decisions recited that the applications had previously been rejected by the Land Office on November 1, 1961, but on appeal to the Director, the decisions were vacated and the cases remanded for further consideration. A further examination of the land resulted in a conclusion that the land in case number Sacramento 058789 was not suitable for lease or sale under the small tract act. In the second instance, case number Sacramento 058790, it was determined, following the field examination, that the land was suitable for lease only with the option to renew reserved to the Government.

The appellants submitted statements of reasons in support of their respective appeals and contend, in substance, that (1) the classification on which the decisions are based is inconsistent in that it determines that one tract is not suitable for small tract entry and the other is suitable for lease only; (2) if a lease is accepted, the appellant will lose or waive his right to purchase the land; (3) and the land is not in close proximity to the Auburn or Sugar Pine dams, and, accordingly, would not affect any recreational potentialities that may develop from the construction of the dams.

A classification report, based on data obtained from a field examination report, dated March 9, 1962, recites that the subject land is a portion of the Nevada-Placer Management Unit, and is being managed for multiple uses which includes timber management, recreation and watershed protection. The report further states that the land is rolling to steep. The terrain makes it impossible to construct roads on legal subdivision lines. To properly develop the land for homesites, roads would have to be constructed on the contour. This would require costly surveys and constructions which would be adverse to the public interest to incur such expense at this time. Furthermore, the classification report recites, piecemeal sale of the tracts would devaluate the balance of the Federal land in the area, and further fracture of the National Land Reserve would create additional management problems.

A subsequent and supplemental classification report, dated April 24, 1962, states, in addition to the data contained in the original report, that the Auburn and Sugar Pine dams have been approved for construction by the Bureau of the Budget. Construction of these dams will make recreation use of the lands in this area much more intensive.

On the basis of the classification reports and the information contained therein, the applied for tracts were classified as not suitable for disposal pursuant to the appellants' small tract applications. In this connection, the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended, authorizes the Secretary of the Interior, in his discretion, to sell or lease a five acre tract of public land which he may classify as chiefly valuable for such disposition. The mere filing of a small tract application vests no rights in the applicant nor does it require that the land applied for be classified for disposition under the Small Tract Act. Cf. John E. Ross, et al., A-27259 (March 12, 1956); also see Garfield Taylor, A-28205 (April 26, 1960). The Secretary may inquire into the propriety of the disposal of a small tract so long as legal title to the tract remains in the United States, and may properly consider and weigh all factors bearing on the suitability of the disposal including the effect on the public interest. State of Wisconsin, et al., 65 I.D. 265 (1958); and Nelson A. Gerttula, 64 I.D. 225 (1957).

Moreover, as in this case, an applicant for public lands, who appeals from an adverse classification of land, has the burden of showing, by submitting substantial affirmative evidence that the classification is erroneous. Cf. Joseph M. Schuck, et al., A-28603 (August 16, 1961). The statements of reasons submitted by the appellants are not supported by any probative evidence; therefore, they are self-serving declarations. An adverse classification will not be disturbed on appeal in the absence of such evidence. Cf. Mary Refugio Jackson, A-27236 (February 29, 1956).

Accordingly, the decision appealed from is affirmed.

Claude M. Murphy and Lenore E. Murphy are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application adversely affected by this decision. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

DISTRIBUTION:
Chamberlain & Chamberlain, Attorneys for Appellants (Certified Mail)
Mr. Claude M. Murphy (Regular Mail)
Mrs. Lenore E. Murphy (Regular Mail)
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Appeal to Sec
Ltr Decision
A-29768 6-19-63

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AUG 27 10 00 AM 1962

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LAND OFFICE

UNITED STATES
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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 062037
062455
062456
062579

August 20, 1962

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DECISION

Jay B. Price :
Clyde Price : Small Tract Applications
James P. Clark :
Richard Dale Price :

Decision Affirmed

The above-named parties have appealed from a decision, dated May 7, 1962, which rejected their applications for small tracts of public land for the primary reason that such lands cannot be classified for small tract use. The decision held the lands valuable for multiple-use management for its commercial timber resources and for public recreation.

In their statements of reasons, appellants assert the subject 20 acre tract was classified by the Sacramento Land Office for public sale on August 1, 1958, and a base price of $3,982.55 placed on the land. After the date of sale had passed, and it being apparent that the Land Office still desired to sell the subject isolated tract of land to the best interests of the U. S. Government, appellants decided to make application to purchase the tract under the cash purchase plan of the small tract act. Accordingly, they argue the best interests of the U. S. Government can still be served by disposition of the subject tract through a lease and sale agreement.

It is of general importance to note that because land has been classified for a designated purpose at a specified time, such action does not preclude a reclassification based upon the public interest. Specifically, under the provisions of Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended by the Act of June 26, 1936 (49 Stat. 1976; 34 U.S.C. 1958 ed. 315-f), the Secretary of the Interior, or his delegate, may properly consider and weigh all factors which have a bearing on the suitability of land for use or disposal at the time an application is filed and considered. Cf. Nelson A. Gerttula, 64 I.D. 225 (1957). The subject and adjacent lands were classified as not proper for small tract use on April 19, 1962 based upon findings that such lands were valuable for multiple use purposes, management of the commercial timber resources, and for public recreation. An applicant who appeals from an adverse classification, has the burden of showing, by substantial affirmative evidence, wherein such classification is in error. Cf Joseph M. Schuck et al., A-28603 (August 16, 1961). The assertions of the appellants do not disprove the basic findings of the Land Office. Accordingly, the decision appealed from is affirmed insofar as it applied to the subject appellants.

Appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 058785
058786

August 27, 1962

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DECISION

Richard A. Murphy John M. Murphy	:	Small Tract Applications

Decision Affirmed

The above-identified parties have appealed from a decision, dated June 25, 1962, rejecting their small tract applications for Lots 16 and 17 sec. 8 T. 13 N., R. 10 E., M.D.M., because it would not be proper to classify these Lots for lease or sale under the Small Tract Act. The decision stated that the Lots had been examined, and that the results of the examination show that they are integral portions of a block of public land which is highly suited for the production of timber and for public recreation; that the Lots control access from the public road south of Todd's Creek, and are thus key tracts to the proper recreational use of the remainder of the public land in section 8; and that the Lots contain the only water available on public land in section 8.

In their appeals, the applicants assert, in essence, that the classification of the Lots as unsuitable for sale or lease as small tracts is without foundation in fact; that the sale by the Bureau of other small tracts in the general area supports their claim; and that a fair and adequate evaluation of the location and physical properties of the Lots was not made prior to the rejection of their applications.

When a small tract application is rejected because the land applied for has been examined and classified as unsuitable for small tract lease or sale, and the applicant elects to appeal, the burden rests with the applicant to show, by submitting substantial, affirmative proof, that the classification is erroneous. Joseph M. Schuck et al., A-28603 (August 16, 1961). In the instant cases, the appellants' unsupported assertions fall far short of the required showing. Hence, the classification of the land, which is, on its face, wholly consistent with the Bureau's current land classification standards, will not be modified.

Accordingly, the decision appealed from is affirmed.

Each of the appellants is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amou of the filing fee will be $5 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Mr. Paul H. Chamberlain, Attorney for Appellants (Certified Mail)
Mr. Richard A. Murphy (Regular Mail)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 054012

September 17, 1962

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DECISION

	:	
Robert F. Galletly	:	Small Tract Application
Noma E. Galletly	:	

Decision Affirmed

Robert F. and Noma E. Galletly have appealed from a decision, dated May 16, 1962, rejecting their above-noted small tract application, among others. The rejection was for the reason that it was not proper to classify the lands for small tract development because (1) disposition of the lands for that purpose would be in direct conflict with the subdivision ordinance of El Dorado County, in which the lands are located, and the County Board of Supervisors are opposed to the allowance of further small tract applications in the area, and (2) in view of the heavy burden it would impose upon the local government for roads, school and police, health, and fire protection, it would not be in the public interest to dispose of the lands under the Small Tract Act at this time.1/

The appellants assert, in substance, that (1) some of the lands have been occupied for five years, (2) if two or three families can be allowed to build a shack-like house or live in trailers and operate junk yards, raise bees, sheep and dogs on several acres of land, then a respectable family should be allowed to build a respectable house under the government regulations, and (3) they question why one tract was classified suitable for development as a small tract and the others were not.

Departmental regulation 43 CFR 1961 Supp., 257.2 provides in the applicable part that:

> "(c) It is the policy of the Secretary. . . to safeguard the public interest in lands. To this end small tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the community or area involved,. . . nor will isolated or scattered settlements be

---

1/ The decision stated that the land embraced in application Sacramento 054178 had been classified for small tract development.

permitted which would impose heavy burdens upon the State or local governments for roads, schools, and police, health, and fire protection...."

The classification action taken is in conformity with the Bureau's policy of cooperating with local governments, which bear the ultimate responsibility, to insure orderly community development. Moreover, the Secretary of the Interior is not required to establish that land which he refuses to classify as chiefly valuable for small tract purposes is unsuitable for such purposes; it is sufficient that in the exercise of his discretion the Secretary finds that the land is not chiefly valuable for such purposes and the applicant who questions his decision must show by substantial positive evidence that the classification is erroneous in order to have it set aside. *Joseph M. Schuck et al.*, A-28603 (August 16, 1961). Nor is it required that the Secretary justify the action taken in classifying land for small tract purposes. The appellants have failed to show wherein the classification action taken in their case is erroneous, and it will not be disturbed.

Accordingly, the decision appealed from is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1369. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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appeal to Sec

Dismissed A-29831
12-20-62

DEPT. OF INTERIOR
SACRAMENTO, CAL.
OCT 1 2 01 PM 1962
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LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In Reply Refer to:
6.05c
Sacramento 047389

DOCKET FILES

September 21, 1962

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DECISION

John J. Hartford : Small Tract Purchase Application

Decision Affirmed

John J. Hartford has appealed from a decision, dated June 18, 1962, rejecting his application to purchase the land embraced in his small tract lease and declaring his lease terminated by operation of law for the reason that the improvements constructed on the land during the lease period or extensions thereof, did not comply with the requirements of the terms of his lease in accordance with Classification Order No. 500 dated July 5, 1957. The decision allowed him 90 days from the receipt thereof within which to remove or otherwise dispose of the improvements placed upon the land, failing in which they would become the property of the United States.

The appellant's appeal, for the most part, consists of describing the material used in constructing the building, the foundation, and relating construction alterations and anticipated construction plans. He quotes the classification order and asserts that he has substantially complied with it and requests that he be given a reasonable time to fully comply with the order.

The appellant's lease was issued, effective January 1, 1958, for a period of three years with option to purchase the leased land within the lease period, provided the required construction improvements had been made. Pursuant to application for lease renewal filed on January 3, 1961, a new lease was issued for one year and the lessee was cautioned that, "in order to qualify for patent of the tract, he must complete the required improvements and apply to purchase before the new lease terminates." He was informed by letter of October 9, 1961 that his lease would expire on December 31, 1961 and on January 2, 1962 the lessee filed an application for a second lease renewal for a period of 60 days.

By decision of January 31, 1962 the application for renewal was considered as an application to purchase and further action on it was suspended for a period of three months from date of the expiration of the lease, during which period lessee was required to complete the improvements in compliance with the classification order and to submit photographs as evidence of such compliance. On March 31, 1962 lessee remitted purchase money for the tract by letter but he made no mention as to whether he had completed the improvements and no photographs were submitted. A field examination of the improvements made on May 8, 1962 disclosed a partially completed wooden, frame-type building constructed on the land. Photographs taken on the date of the examination shows that the east side of the constructed frame-work was only partially enclosed and all other sides were open revealing only the framing throughout the structure. The rafters were sheeted but contained no covering. The general appearance of the improvements was nothing more than the frame-work of a building with abundance of small boulders and rocks near the northeast area of the improvements.

Classification Order No. 500 classifying the lands for small tract development provides in the applicable part that:

> "To maintain their rights under their leases, lessees will be required *** to construct substantial improvements on their lands ***. Improvements *** must conform with health, sanitation and construction requirements of local ordinances and must, in addition, meet the following requirements. The home must be suitable for year-round use, built on a permanent foundation in a workmanlike manner out of attractive materials properly finished and containing a minimum floor space of 400 square feet."

By section 2(a) in the appellant's lease, and renewed lease, he agreed to construct upon the land, during the period of the lease, the improvements specified in the classification order. The appellant has had possession of the land for more than 4 years, during which period he was given ample opportunity to make the required improvements. It is apparent that the improvements, in no way, are suitable for a year-round habitation, consequently the requirements of the classification order have not even been substantially complied with and the application to purchase was properly rejected. Carl C. Kirk, A-28822 (June 22, 1962) and cases cited therein.

Accordingly, the decision appealed from is affirmed.

John J. Hartford is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Small Tract Act: Classification 2233.2

Small tract applications for lands which have been classified as chiefly valuable for public recreational purposes are properly rejected.

Jack W. Reed, Lloyd Lewis, Sacramento 064156 and 064157 (January 18, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 FEB 9 AM 10 00
(3)

both applications adversely affected by this decision the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

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Appeals List No. 1
MHS

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Sacramento 053988 etc.
077646

CITY OF PLACERVILLE, WILLIAM G. MEAGHER, ET AL.

Approved March 21, 1966

Small Tracts: Recreation and Public Purposes: Classification

Small tract applications must be rejected where it is determined that the lands applied for are highly suitable for development for recreation and public purposes, as planned by the City of Placerville, California, in connection with its recreation and public purposes petition-application for the same lands.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
721
Sacramento 053988 etc.
077646

December 27, 1965

DECISION

William G. Meagher, et al.	:	Small Tract Applications
City of Placerville, California	:	Recreation and Public Purposes
	:	Petition-Application

Lands Classified as Suitable for Recreation and Public Purposes, Protests Dismissed, Small Tract Applications Rejected

On May 6, 1957 and other dates, William G. Meagher, et al., pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1958 ed., § 682a), filed small tract applications, Sacramento 053988 etc., embracing in part certain of the public lands hereinafter described. 1/

On February 12, 1964, the City of Placerville, California, pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C., 1958 ed., § 869 et seq.), filed a petition-application, Sacramento 077646, for all of the lands described in the small tract application.

A proposed decision was issued on April 27, 1965 by the District Manager, Sacramento District Office, classifying the subject lands as proper for title transfer for public park purposes under the Recreation and Public Purposes act of June 14, 1926, supra.

Protests against the proposed classification action were received from five of the small tract applicants.

The Small Tract Act and Recreation and Public Purposes Act, authorize the Secretary of the Interior, inter alia, to examine and classify public lands, and to determine, in his discretion, whether or not such lands are suitable either for small tract purposes, or recreation and public purposes. (Whether such lands are to be disposed of under the Small Tract Act or the Recreation and Public Purposes Act, is a matter committed wholly to the discretion of the Secretary, or his authorized delegate.)

1/ See attached appendix for the names of the applicants, serial numbers of the respective applications, and dates applications were filed.

A review of the records discloses that Bureau personnel, in examining the lands, ascertained all relevant and material facts bearing on their character and use value, and came to a considered and informed judgment that the lands are highly suitable for recreation and public purposes, and should be retained in (some form of) public ownership for such purposes, rather than disposed of as small tracts. It has been consistently held by the Department that where it is determined that public lands are suitable for recreation and public purposes, the lands will be retained in public ownership so that they will be available to the public for such uses, rather than dispose of them to individuals for private use. Cf. John Rovetto, A-28740 (February 8, 1963); Otis W. Anderson, A-28721 (April 29, 1963).

The lands in question are highly suitable for outdoor recreation activities by reason of their terrain, cover, accessibility and proximity to the City of Placerville. The lands, containing approximately 60 acres, are located adjacent to the City of Placerville, in El Dorado County, which is 43 miles east of Sacramento, California, and 56 miles west of the south shore line of Lake Tahoe, via U. S. Highway 50. Access is by Bedford Street, a county road out of Placerville. The terrain is submountain, with altitudes ranging from 1920 to 2260 feet, with north and south facing slopes. Approximately 20 acres are timbered with yellow pine trees. The remainder is covered with manzanito and other brush. Big Canyon cuts the lands from the southwest to the northeast and contains a stream. The climate is mild throughout the year.

It is estimated that the present population of Placerville of approximately 5400 will increase to 24,000 by the year 1985. In addition, increasing traffic passes through the City of Placerville and motorists stop frequently to picnic and sightsee on the subject lands. The increase in population, it is estimated, will necessitate the development of 60 to 90 additional acres of park and recreation space.

The subject lands are needed now by the City of Placerville in connection with its plan to develop the area for outdoor use by the local citizens and visiting tourists. The planned facilities set forth in the City's development plan include picnicking, day camping, nature study, mineral area interpretation, archery, riding and hiking, outdoor theater, roads and parking areas, sanitation, and domestic water supply.

In view of the foregoing, the subject lands, described as:

T. 10 N., R. 11 E., M.D.M., California
Sec. 6, Lots 14 and 15 (excluding Mineral Survey 6259)
Sec. 6, Lot 22 (excluding Mineral Surveys 6259, 6279, 6480)
Lot 28 and public land in Mineral Surveys Nos. 6259,
6279, and 6480, containing approximately 60 acres,

are hereby classified as proper for disposition for public recreational purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended supra. This classification is consistent with the regulations, 43 CFR 2410.1-3(a)(2) and 2410.1-3(c)(3). The classification segregates the lands from all other forms of appropriation under the public land or mining laws.

The protestant small tract applicants have not submitted any substantial or positive evidence to show that the classification of the lands as being more suitable for disposal for public recreational purposes than for small tract purposes, was based on error of fact or judgment. Accordingly, the protests are dismissed, and all of the small tract applications listed on the attached appendix are hereby rejected. 2/

This decision constitutes a final administrative determination by the Department under 43 CFR 1844.1 as to the rejection of the small tract applications, and under 43 CFR 2411.1-1(e) as to the favorable classification of the lands for public recreational purposes as applied for by the City of Placerville in its petition-application.

John O Crow
Acting Assistant Director

Approved: March 21, 1966
Harry R Anderson
Assistant Secretary of the Interior

2/ The Director, Bureau of Land Management, has authority at any time to take up and dispose of a matter pending in a land office or review any decision of a subordinate officer with or without an appeal. State of Utah, 71 I.D. 392 (1964).

DISTRIBUTION:

Each small tract applicant listed on appendix
City of Placerville, California
Hon. Harold T. (Bizz) Johnson, House of Representatives, Washington, D. C.
Mr. Frank E. Sylvester, Regional Director, Bureau of Outdoor Recreation,
San Francisco, California
Mr. Robert D. Montgomery, Regional Manager, Fish and Game Commission,
State of California
Mr. Bruce Robinson, Planning Director, County of El Dorado, California
Mr. Norman F. Aye, President, Placerville Business and Professional Council
Mr. Lewis P. May, Attorney at Law
Mrs. H. S. Gilmore
Mr. and Mrs. Gotcher
Mr. and Mrs. Chriswell
Mr. Ray Chism, Chairman, Board of Supervisors, County of El Dorado, California
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
Appeals List No. 1
JBJ

APPENDIX

Small Tract Applications filed under the Act of June 1, 1938 (52 Stat. 509; 43 U.S.C. 682a-e), as amended, for portions of the subject land are as follows:

Serial Number	Date Filed	Applicant
053988	May 6, 1957	William G. Meagher, Sr.
053989	May 6, 1957	Thomas R. Meagher
053990	May 6, 1957	James F. Meagher
053991	May 6, 1957	William G. Meagher, Jr.
054199	June 21, 1957	Henry Clay Mize
054200	June 21, 1957	Clayton Mize
054286	July 9, 1957	Marcus B. Taylor
054470	August 12, 1957	William Lesher
054506	August 16, 1957	Merlin J. Eberhardt
054525	August 21, 1957	Art Taber
054905	October 23, 1957	Robert E. Pearce
054919	October 28, 1957	Gladys Juanita Mott
055073	December 3, 1957	Robert J. Gilkerson
056183	July 3, 1958	Dolores Kerst Lewis E. Kerst
060324	December 10, 1959	James T. Grant

Small Tracts: Multiple-Use: Classification 2232

A small tract application must be rejected in its entirety, where it is determined that the land applied for comprises a key tract for access to other public lands and, under the criteria of the Classification and Multiple-Use Act of September 19, 1964, is needed for continued multiple-use management by the Federal Government for wildlife, outdoor recreation, timber production, watershed protection, and other public values, and private use and residential construction would be incompatible with these values.

Vaughn R. McNulty, Sacramento 055378 (September 16, 1966)

DOCKET FILES

Copy in case

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 SEP 23 PM 2 49 (3)

In reply refer to:
704
Sacramento 055378

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 16, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Vaughn R. McNulty : Small Tract Application
:
Application Rejected

Vaughn R. McNulty has filed an application under the Act of June 1, 1938, 52 Stat. 609, as amended by the Act of June 8, 1954, 68 Stat. 239, 43 U.S.C. 682a (1964), for a portion of lot 9, sec. 17, T. 12 N., R. 10 E., M.D.M. 1/

The application was previously rejected by decision of the Sacramento Land Office dated July 14, 1960. An appeal was filed and the rejection was affirmed by the Appeals Officer's decision dated June 12, 1961, from which an appeal to the Secretary of the Interior was filed. The case was remanded for further consideration by letter decision A-29150 of November 20, 1963, of the Assistant Secretary, Public Land Management, for consideration of issuance of a small tract lease on a lease only basis, renewable at the option of the Bureau of Land Management. The Assistant Secretary's determination was made on the premise that the tract contained improvements suitable for occupancy.

A further study has been conducted and a report reflecting the findings has been prepared. It was determined that the applicant's water well and two of the three cabin improvements claimed by the applicant were located on private property. The applicant stated in interview that he knew this to be the case. The only improvement on the public land described in the application is decayed, dilapidated, and uninhabitable. The applicant further stated in interview that he was not interested in a lease and that he wished to buy the land and build a new residence.

The parcel is nonmineral in character. It is expected that the land will be included in a proposed first-form withdrawal by the Bureau of Reclamation, U. S. Department of the Interior, in connection with development of Greenwood Dam and Reservoir scheduled for construction between 1980 and 1990. The parcel is a key tract for access to other public lands and, under the criteria of the Classification and Multiple Use Act of September 19, 1964, 78 Stat. 986, 43 U.S.C. 1411-18, is needed for continued multiple-use management by the Federal Government for wildlife, outdoor recreation, timber production, watershed protection, and other public values. Private use and residential construction would not be compatible with these values.

1/ The land applied for was formerly embraced in the Yellow Kid Lode Mining Claim owned by the appellant, which was declared null and void by a decision of the Sacramento Land Office, dated May 18, 1964, because of the failure of the claimant to file a timely answer to a contest complaint brought by the United States against the claim. No timely appeal has been taken from the decision of May 18, 1964, consequently it has become final.

It is concluded, therefore, that it would not be in the public interest to classify the subject land for small tract lease or sale, and the application filed by Mr. McNulty is hereby finally rejected in its entirety. 2/

Vaughn R. McNulty is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is taken the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error.

John B. Piccolo

Acting Chief,
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Mr. Vaughn R. McNulty (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RBO

2/ The Director, Bureau of Land Management, has authority at any time to take up and dispose of a matter pending in a land office or review any decision of a subordinate officer with or without an appeal. State of Utah, 71 I.D. 392 (1964).

appeal to file
Vacated Remanded
A-29890 - 2-12-65 (ltr)

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

DEC 3 10 50 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 065727
065961

November 23, 1962

Certified Mail
Return Receipt Requested

DECISION

Werner Allmendinger : Small Tract Application
: Public Sale Application

Decision Affirmed

Mr. Werner Allmendinger has appealed from a decision, dated April 16, 1962, rejecting the small tract and public sale applications he had filed for certain described land in Tuolumne County, California. 1/ The decision stated that the land sought was segregated as mineral land in 1898, and that it is adjacent to and on the southeasterly extension of the Carlotta and Pennsylvania lode veins, constituting west branches of the Dead Horse-Eureka East Belt Mother Lode vein system, productive of lode gold. The decision held that the applied for land had been examined and found to be "mineral in character, valuable for gold," and that it had been "claimed under the mining laws and [is] presently being prospected."

In his appeal, Mr. Allmendinger asserts that the land is not on the southeasterly extension of the Carlotta and Pennsylvania lode veins. He claims that these veins run in a southwesterly direction from the Dead Horse-Eureka East Belt Mother Lode vein system, and that the land he seeks is on the side of the Pennsylvania and Carlotta that are farthest from the East Belt Mother Lode vein. He states that, in any event, the character of adjacent land is of no significance, and that if it is, the fact that land lying between the Carlotta-Pennsylvania patented claims and the East Belt Mother Lode vein and land on the northwest side of the Pennsylvania has, in recent years, been patented to small tract applicants should be considered in his favor as this patented land is closer to the Dead Horse-Eureka East Belt Mother Lode vein system than the land for which he has applied.

1/ Both the small tract and public sale application describe precisely the same land, Lots B, B, and B in the NW$\frac{1}{4}$ Sec. 5, T. 1 N., R. 16 E., M.D.M., California, the public sale application having been filed only six days after the small tract application.

Mr. Allmendinger asserts that the land for which he has applied is not presently or prospectively valuable for gold irrespective of the history of other land in the vicinity. He points out that the classification report upon which the decision appealed from is based states merely that the land is "mineral in character for gold," not that it is "valuable for gold" as does the decision. He states, in this connection, that the assessed valuations for property tax purposes of adjacent land, which produced substantial quantities of gold in past years, do not now include any value for mineral content. Mr. Allmendinger also challenges that part of the decision appealed from which states that the land for which he has applied is currently being prospected and is claimed under the mining laws. He states that he examined the land and the official records of Tuolumne County both before he filed his applications and after the decision appealed from was issued and found no evidence of prospecting and no record of a conflicting mining claim. In this connection, he states that after he received the decision appealed from he asked the Land Office to identify the mining claim which, according to the decision, covers the land, but that the Land Office refused to do so.

It appears that the decision appealed from incorrectly held that the land sought is claimed under the mining laws. There is nothing in the record to substantiate such a holding. There is, nevertheless, evidence of recent prospecting on the land, and sufficient evidence showing that the land is mineral in character.

In connection with the statement concerning recent prospecting on the land, a current field report states that evidence of prospecting was found on Lot B in the NW$\frac{1}{4}$NW$\frac{1}{4}$NW$\frac{1}{4}$ Sec. 5. The working is an open cut in decomposed granite trending SW-NE, following scattered showings of vein quartz.

The Fourteenth Report of the California State Mineralogist describes, at page 141, the Carlotta Mine as being a quartz mine 1 mile north of Tuolumne on a ridge west of Cherokee Creek and comprising 3 lode claims: the Carlotta, the North Carlotta, and the Pennsylvania. Two veins in granitic country rock are on the property. The Carlotta vein strikes N. 45° E. and dips 80° N.W., and the Pennsylvania vein strikes N. 20° E. and dips 20° E. Both veins are branches of the Eureka-Dead Horse lode, a prominent vein on the East Belt system.

The land in question is situated west of the southwestern boundaries of the Pennsylvania and Carlotta claims. It is underlain by granitic rocks of Jurassic age, which are the same host rocks for the important gold bearing lodes situated adjacent to the land on the north and east. Though much of the land is mantled by granitic slope-wash, the presence of abundant vein quartz in the decomposed granite indicates a nearby source.

In view of these findings, it cannot be said that there was no reasonable basis for classifying the land in question as mineral in character. Although the appellant's statement of reasons clearly indicates that he does not agree with this classification, his self-serving statements do not justify modifying the classification. It has been repeatedly held that a classification of land will be modified only when shown to be erroneous by substantial, affirmative proof. Cf. Joseph M. Schuck et al., A-28603 (August 16, 1961).

It is true that the classification report to which Mr. Allmendinger refers states simply that the land is "mineral in character for gold," and does not expressly state that the land is "valuable" for its gold content. Public land is not, however, classified as "mineral in character" unless, in the opinion of the examiner, the minerals can be extracted at a profit. John M. DeBevoise, 67 I.D. 177, 179 (1960).

Even if other land in the area of the land in question has been patented to small tract applicants, the appellant's case is not strengthend on that account. The land may have been determined to be nonmineral in character. Moreover, land valuable for oil, gas, coal, or other minerals may be patented to a small tract applicant, with appropriate reservations to the United States of the minerals found therein, if the sale will not be incompatible with the mineral development of the land. 43 CFR 1961 Supp. 257.16. In the instant case, however, the classification report specifically stated that small tract development and mineral development would be incompatible, and the appellant has submitted nothing to show this finding is incorrect. Hence, the rejection of the appellant's small tract application will not be disturbed. Cf. J. W. Allen, et al., v. E. A. Moller et al., A-26931 (November 5, 1954).

In connection with Mr. Allmendinger's public sale application, the law provides that only nonmineral land may be sold under the public sale law except that those containing oil, gas, and other leasable minerals may be sold with an appropriate reservation of such minerals to the United States. Cf. 30 U.S.C. 21, 43 CFR 250.8.

Accordingly, the decision appealed from is affirmed.

Mr. Allmendinger is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5 for each application for which favorable action is sought. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. Werner Allmendinger (Certified Mail)
SD (California)
LO (Sacramento)
Division of Lands and Recreation
Case File
Perm. File
Appeals Reading File
Attorney's Reading File
LLM

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

DEC 3 10 50 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 056573

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

November 26, 1962

DECISION

William R. Wetzel : Small Tract Application

Decision Affirmed

William R. Wetzel has appealed from a decision, dated July 18, 1962, which rejected his application for a small tract for the reasons that the area is being developed for rural homesites, the public land in this area is suitable for recreational development, and the classification of the subject lands at this time for small tract entry would not be in the public interest. The decision also acknowledges that Amador County Board of Supervisors who had previously requested that the public lands within the county be held in Federal ownership until the recreation and public purpose needs of the County could be identified, had rescended its request.

On appeal, Mr. Wetzel alleges that the lands sought by his small tract application were at first classified for small tract entry, but later reclassified. He also denies the validity of the reasons given for the rejection of his application.

It is of general importance to note that because the lands had been classified for a designated purpose at a specified time, such action does not preclude a classification based upon the public interest. Specifically, under the provisions of Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended by the Act of June 26, 1936 (49 Stat. 1976; 34 U.S.C. 1958 ed. 315f), the Secretary of the Interior, or his delegate, may properly consider and weigh all factors which have a bearing on the suitability of land for use or disposal at the time an application is filed and considered. Cf. Nelson A. Gerttula, 64 I. D. 225 (1957). The subject and adjacent lands were classified as not proper for small tract use based upon findings that they were valuable for rural homesites and for public recreation. Even though the County rescinded its request to withhold these lands from entry until it can determine its recreational and public purpose needs, an applicant who appeals from an adverse classification has the burden of showing by substantial affirmative evidence wherein the classification is in error. Cf Joseph M. Schuck, et al., A-28603 (August 16, 1961). The allegations and assertions of the appellant do not disprove the basic findings of the classification, and consequently, do not warrant a modification on appeal.

Accordingly, the decision appealed from is affirmed.

William R. Wetzel is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard A. McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Mr. William R. Wetzel (Certified Mail)
SD (California)
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Case File
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Appeals R/F
JJS

Appeal to Sec
Vacated ltr Dec.
A-29940 — 2-17-64

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JAN 18 1963
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

In reply refer to:
6.05c
Sacramento 072459

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 3, 1963

Certified Mail
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DECISION

Mary E. Wing : Small Tract Purchase Application

Decision Affirmed

Mary E. Wing has appealed from a decision, dated October 11, 1962, rejecting her above-identified small tract purchase application for the reason that Classification Order No. 530 of January 23, 1958, which classified the applied-for tract, among others, for direct sale had been revoked on October 2, 1962.

The record discloses that the revocation of the classification was based upon the findings of a field examination of subject land. The field examination report shows that the tract lies near the high-water line of the Oroville Project, now under construction by the State of California. Upon completion of the project, the area will be exceedingly valuable for public recreational use due to its close proximity to the lake. Accordingly, it was determined that disposal of the tract would be unwise, contrary to sound planning and conservation policies, and that it would be in the best interest of the public for the land to remain in public ownership for multiple-use management.

The appellant asserts, in substance, that subject tract is fully five miles from the nearest high-water line expected from the lake; the tract is inaccessible to the public, has no level ground, no available water supply, no trees whatsoever, and is covered by dense brush making it a fire hazard for adjoining private properties which completely surround the tract; the State of California is buying all land within 300 feet of the reservoir for development for suitable recreational sites along the lake shore, and the tract involved could never be used for such development, is of no use to the public, and should be sold to her and put on the tax rolls.

The revocation of the classification of the land for small tract disposition restored it to the National Land Reserve, and it is not subject to disposition under the Small Tract Act until again classified for that purpose. Cf. John Francis Ruby, A-27301 (May 4, 1956). Also see 43 CFR 1961 Supp. 257.3(a). Moreover, the Department has ruled that a small tract application is properly rejected when the public interest requires that the land applied for remain in public ownership for public recreational use. Arabelle Hoover et al., A-28430 (January 19, 1961).

The appellant has presented no positive and substantial evidence that the Land Office decision is in error, and the decision is hereby affirmed.

Mary E. Wing is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Mary E. Wing (Certified Mail)
Division of Lands and Recreation
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LO (Sacramento)
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Appeals Reading File
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RLE

appeal to Sec
Dismissed A-29980 (Ltr Dec.) 4-29-63

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LAND OFFICE
SACRAMENTO, CALIF.
FEB 6 - 1963
A.M. P.M.
7 8 9 10 11 12 1 2 3 4 5 6

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 057760 etc.

January 29, 1963

Certified Mail
Return Receipt Requested

DECISION

Oscar H. Gustafson et al. : Small Tract Applications

Decision Affirmed

Oscar H. Gustafson, and other persons listed in attached appendix, have appealed from a decision, dated August 9, 1962, rejecting their applications filed under the Small Tract Act of June 1, 1938, as amended, (43 U.S.C. Sec. 682(a)) for tracts of land in Secs. 22, 24 and 27, T. 24 N., R. 3 E., M.D.M. California.

The rejection held that the lands are unsuitable for disposition under the Small Tract Act because; (1) those in Secs. 22 and 27 are timbered and lie adjacent to heavily-fished Butte Creek in an excellent recreation area with public access, the lands in Sec. 24 contain valuable commercial timber, and the area is also subject to heavy recreational use with available public access, (2) all of the lands are within the Feather River Program Area of the Redding District consisting of 25,505 acres, 14,000 acres of which are timbered or suitable for rehabilitation, and are being managed on a sustained-yield basis with an estimated stand of commercial timber of 77.7 million board feet valued approximately at $2,000,000 and the lands are also valuable for watershed control, and (3) it would be in the best interest of the public to retain the lands in Federal ownership for continued multiple-use management of the areas.

On appeal, two appellants assert that Sec. 27, in which the land they applied for lies, has no commerical timber, is steep and mountainous and suitable for mountain cabins. The appellant for land in Sec. 22 asserts that the Section, being completely surrounded by privately owned land, has no public access, no present recreational value, does not contain significant commerical timber and the fact that it is adjacent to Butte Creek is not pertinent. Eleven applicants (Westhaven Associates) for lands in Sec. 24 assert in substance in a consolidated appeal that the section is isolated by privately owned land, most of the timber is of low grade and the section is too small and too far from other public lands to be properly controlled for camping and recreation. They contend that Sec. 24 should be considered separately because most of it drains into Little Butte Creek which is already a part of the Paradise Water Reservoir system and comes under their pollution control rules.

A review of the records shows that there is an abundance of evidence which supports the findings in the decision from which the appeals are taken and it is not necessary to consider the sections separately. The records, including pertinent statements by the appellants, further disclose that the lands involved are integral parts of the multiple-use management program of the areas for sustained timber yield, timber rehabilitation, recreation and watershed purposes.

The Department has consistently held that it is proper to refuse to classify lands for small tract disposition where the public interest requires that the lands remain in public ownership for recreation and for multiple-use management. Cf. Arabelle Hoover et al., A-28430 (January 19, 1961); Allen Loeschen et al., A-28700 (July 7, 1962); Clarence J. Heidbreder, A-28841 (July 26, 1962). See also 43 CFR 1961 Supp. 257.2(a). The appellants have not presented any positive or substantial evidence that the classification action taken is erroneous and in the absence of such evidence the classification will not be disturbed. Joseph M. Schuck et al., A-28603 (August 16, 1961).

Accordingly, the decision appealed from is affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington 25, D. C. and the amount of the filing fee will be $5 for each application upon which favorable action is sought. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Oscar H. Gustafson (Certified Mail)
Ena H. Gustafson (Certified Mail)
Theodore Scott (Certified Mail)
Mrs. Eric George B. West, Acting for Westhaven Associates (Certified Mail)
Appellants, Sacramento 059792 through 059802 (Regular Mail)
SD (California)
LO (Sacramento)
Division of Lands and Recreation
Case File; Perm. File; Appeals Reading File; Attorneys' Reading File;
RLE

APPENDIX

Name	Sacramento Serial No.
Oscar H. Gustafson	057760 ✓
Theodore Scott	057782 ✓
Ena H. Gustafson	057819 ✓
Janet L. Lehman	059792 ✓
Starlita W. Weubbe	059793 ✓
Alice de Groot	059794 ✓
Albert D. Hall	059795 ✓
Eric G. West	059796 ✓
Rock S. S. West	059797 ✓
Jonathan R. West	059798 ✓
Leif P. P. West	059799 ✓
George B. E. West	059800 ✓
Lucille S. J. Hall	059801 ✓
E. John D. West	059802 ✓

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 12 2 07 PM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 057770

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 6, 1963

Certified Mail
Return Receipt Requested

DECISION

Dillon L. Woodfill : Small Tract Application

Decision Affirmed

Dillon L. Woodfill has appealed from a decision, dated October 23, 1962, which, among others, rejected his above-noted small tract application because the land sought is not suitable for development as a homesite. The stated reasons for rejecting the application are that (1) the terrain is too rough and mountainous to be developed properly for a homesite, (2) access is not possible along the boundaries as presently lotted, and (3) costly surveys would be required in order to provide rights-of-way for access roads conforming to the terrain.

The appellant asserts that the tract for which he applied is an ideal building site, is not too rough and mountainous to develop and adjoins claims which presumably were allowed to his son and daughter, 1/ since they were not denied in the decision, and from which he has direct access provided to his claim, thus expensive surveys are not needed and the right-of-way problem stated in the decision is obviated. On this basis he contends that the decision failed to give proper consideration to the special features of his claim distinguishing it from the other claims.

The report of field examination of the lands, contained in the record, substantiates the findings in the decision from which the appeal is taken. The report shows that all of the lands were examined, and that the tract for which the appellant applied has no special features distinguishing it from the other tracts with respect to topography and rights-of-way.

A right-of-way along the boundaries of a small tract is an essential requirement under the Department regulations 43 CFR, 1961 Supp. 257.17 (b), and small tracts will not be leased or sold where it would impose a heavy burden upon the State or local governments for roads, schools, and police, health and fire protection (43 CFR, 1961 Supp., 257.2(a)). Moreover, it has been held that a small tract application is properly rejected

---

1/ The appellant has not identified the serial numbers of the respective applications of his son and daughter, nor does the record before us indicate that either of these applications has been allowed.

where the land sought is topographically unsuitable for small tract development and where disposition of the land would involve the Bureau in costly, complex surveys. James J. Kendew, A-27145 (April 8, 1955); Raymond B. Oliver, A-28016 (August 17, 1959).

The appellant has not presented any substantial, positive evidence that the adverse classification of the land is erroneous, and the classification will not be disturbed Joseph M. Schuck et al., A-28704 (August 22, 1961).

Accordingly, the decision appealed from is affirmed.

Dillon L. Woodfill is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Dillon L. Woodfill (Certified Mail)
SD (California)
LO (Sacramento)
Division of Lands and Recreation
Case File
Perm. File
Appeals Reading File
Attorneys' Reading File
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JUL 17 1963
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

In reply refer to:
6.05c
Los Angeles 0144698

July 8, 1963

DECISION

Kenneth Paul Dickinson	:	Small Tract Lease

Case Remanded

Kenneth Paul Dickinson has appealed from a decision of the Land Office, Riverside, California, dated March 6, 1963, dismissing his protest to a notice terminating his small tract lease by operation of law. Thereafter, the Land Office Manager requested the return of the case file for further action, because Mr. Dickinson may have complied with the terms of his lease.

Accordingly, the case is remanded to the Riverside Land Office for appropriate action.

Dale E. Zimmerman
Chief, Division of Appeals

DISTRIBUTION:
Kenneth Paul Dickinson
Division of Lands & Recreation
Appeals List No. 1
MHS

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 051984
Small Tract

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1963 JUL 17 PM 2 44

DOCKET FILES

JUL 16 1963

Date Land Office
decision rendered: May 22, 1963
Decision served: May 24, 1963
Appeal filed: June 25, 1963
Envelope containing
appeal postmarked: June 24, 1963
Filing fee paid: June 25, 1963

Mr. Edward M. Blankenheim
P. O. Box 326
Shasta, California

Dear Mr. Blankenheim:

Your appeal and the record in the above-identified case have been received in this office.

The record discloses that the notice of appeal was filed and the filing fee was paid after the 30-day period allowed by the Department's rules of practice (43 CFR 221.2(a) and (b), Circular 1999 enclosed). Although the notice of appeal and the filing fee were received within the grace period provided in section 221.92(b), the postmarked on the envelope shows that they were not transmitted before the expiration of the 30-day period within which to file the appeal, and therefore we cannot waive the delay in filing. Consequently, the Bureau cannot consider your appeal and must close the case as provided in section 221.2(c).

The case record will be returned to the Land Office Manager, through the Bureau's State Director~~XXXXXXXXXXr~~, for any further necessary action, including the refund of any moneys which may be due in connection with the case.

Sincerely yours,

(Sgd.) Richard J. McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure Circular 1999

cc:
SD (California) with case record Sacramento 051984
LO (Sacramento) ✓

DOCKET FILES

EPT. OF INTERIOR
ACRAMENTO, CAL.

SEP 13 2 33 PM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 055548

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 10, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Thelma Porteous : Small Tract
:
:

Decision Affirmed

An appeal has been filed in behalf of Thelma (Mrs. Newman S.) Porteous by Wallace Porteous, her son, from a decision, dated April 11, 1963, notifying Mr. Newman S. Porteous, now deceased, that the 2.5-acre tract of public land for which he had applied under the provisions of the Small Tract Act, could be purchased upon the payment of $1,429.25, the balance due for the tract, which has been appraised at $1,500.

It is stated on appeal that Mr. and Mrs. Porteous had lived on the land and paid taxes on the property for over 40 years; that it was their understanding the length of occupancy upon the land would be a determining factor in establishing the purchase price for the tract; 1/ that Mr. Porteous' recent death leaves Mrs. Porteous with nothing but the house on the land and the sum she receives through Social Security, from which she could not afford to make a down payment on the amount of the purchase price established for the land. She, in effect, requests reconsideration of the appraised price.

The record discloses that the tract in question lies within a sizeable block of public land. However in the area to the northwest, especially around the nearby small village of West Point in Calaveras County, the land use is a pattern of small acreages devoted to urban types of homes, and vacation or retiree homes. As shown by the record, the appraised value established for the tract was determined in accordance with approved appraisal methods. The appraisal was made for the fee title to the unimproved land and was the result of an evaluation of the land based principally on available market data and other data and information assembled by qualified personnel of this Bureau.

The long-time occupancy of the land by the appellant and her late husband and other equitable factors were considered prior to the issuance of the

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1/ The record shows the appellant cannot qualify as an applicant for a homesite under the provisions of the Mining Claim Occupancy Act of October 23, 1962 (72 Stat. 1127) inasmuch as there was no subsisting mining claim on the land in question as of the date of the Act, the Golden Rule mining claim having been declared null and void long prior to the date of the Act by decision of the Land Office Manager, dated June 4, 1958, Contest 5533.

decision from which appeal is taken. The appellant's statement of financial inability to purchase the tract is not material to the proper appraisal of the land. Under the Bureau's land conservation program no transaction will be entered into or consummated unless the Government will receive full value for the public land involved, nor may any party to a transaction with the Government be accorded any special consideration other than that allowed under the regulations.

To successfully challenge the validity of an appraisal, an appellant is required to assume the burden of showing by substantial, positive evidence that the appraisal is erroneous or unreasonable. Daniel Hicken, A-27877 (March 5, 1959). This the appellant in the instant case has not done.

Accordingly, the decision appealed from is affirmed.

Thelma Porteous is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If and appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Mrs. Thelma Porteous (Certified Mail)
Mr. Wallace Porteous
Division of Lands and Recreation
Division of Appraisals
Appeals List No. 1
MAG

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
OCT 11 10 00 AM 1963
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
6.05c
Los Angeles 069762
067256
066941
069668

September 25, 1963
Certified Mail
Return Receipt Requested

DECISION

Earl Kerr
Herbert R. Morrow
Oliver A. Smith
Neal C. Hayden

Small Tract Applications

Decisions Affirmed

The above-named parties have appealed from separate decisions of the Manager of the Land Office formerly at Los Angeles, dated March 13, July 16, and August 1, 1947, respectively 1/, rejecting their above-identified small tract applications for the reasons that, in some of the cases the land applied for was unsurveyed and included in a First Form Reclamation withdrawal, and in one case the land is withdrawn for both reclamation and powersite purposes.

The appellants contend, in substance, that the land was surveyed at the time they filed their applications; the Bureau of Reclamation has indicated that it has no objection to use of the land for small tract purposes; and, the land cannot be used for powersite purposes because Parker Dam has been constructed, and the application for this land is in order.

The appellants, however, have not submitted any factual data, or other positive or substantial evidence to show that the decisions appealed from are in error. One appellant claims that the land applied for was surveyed [at the time that he filed his application] as evidenced by the iron stakes found on the ground. The records show, however, that the particular land involved was not surveyed at the time of the filing of the applications, and no official survey of the land has been made to date by the Bureau. Moreover, the land in question is still withdrawn under First Form Reclamation withdrawal, and in the one case under reclamation and powersite withdrawal both. There is nothing in the record to show that the agencies having jurisdiction over the land, i.e. the Bureau of Reclamation or the Federal Power Commission, have indicated their approval of having the lands classified as suitable for small tract purposes.

Accordingly, the decisions appealed from are affirmed.

1/ The appeals were received in this office on September 13, 1963. The appeals apparently have been misplaced, and were recently brought to light in connection with an internal audit conducted by the Bureau as to unearned monies retained on the records of the Bureau.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the filing fee will be $5 for each application involved, or a total of $20 if appeals are filed by all of the appellants. In taking an appeal there must be strict compliance with the regulations. If an appeal is taken, the appellant will have the burden of proving by presenting positive and substantial evidence, wherein the decision is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Mr. Earl Kerr (Certified Mail)
Dr. H. R. Morrow (Certified Mail)
Mr. Oliver A. Smith (Certified Mail)
Mr. Neal C. Hayden (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
RBO

RECEIVED
OCT 7 1963
SACRAMENTO LAND OFFICE

DOCKET FILES

In reply refer to:
6.05c
Los Angeles 0112589

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 26, 1963

Certified Mail
Return Receipt Requested

DECISION

Elizabeth Jean Corfino : Small Tract Application

Decision Affirmed

Elizabeth Jean Corfino has appealed from a decision, dated April 16, 1963, rejecting her small tract application because it would not be proper to classify the applied for land for small tract purposes as there are more than 1,000 small tracts already available in the general area of the land applied for; and it would not be in the public interest to classify [illegible] and open additional lands for such purposes, particularly where small tract development would probably create undue hardships on county agencies. The decision recited that classification of the land at the present time for small tracts would lead to a piecemeal disposal of public lands in the area, thereby creating a fragmentary land pattern; and that the San Bernardino County Planning Commission has repeatedly expressed disapproval of additional small tract classifications.

On appeal, Mrs. Corfino alleges, in substance, that during the nine years since her application was filed, lands on three adjoining sides of the acreage she applied for were purchased and built upon, including a tract applied for by her parents. Thus, she contends, instead of a fragmentary land pattern being created by small tract classification of the land she seeks, the situation would be the reverse. Mrs. Corfino asserts in light of the encouragement given her by the Land Office periodically in response to inquiries with respect to her application, she has been anticipating building on the land and has plans drawn for a house.

The record discloses that lands on two sides of the tract sought by the appellant, the south and east, have been purchased and built upon. The record reveals also that there are other patented tracts located in the section (sec. 26, T. 2 N., R. 5 E., S.B.M.) wherein the applied for land is located. However, it appears from the record that no lands have been classified for small tract purposes within the particular legal subdivision (NW$\frac{1}{4}$SW$\frac{1}{4}$ of sec. 26) wherein the tract sought is located; that except for the tract applied for by the appellant, this legal subdivision is unsuitable for small tract development because of its location in a major wash; and that in view of the objection of the County Planning Commission no further small tract classifications will be made in the immediate area.

The filing of a small tract application does not create in the applicant any right or interest in the land covered by the application which imposes any bar to an adverse classification of the land. Joseph M. Schuck et al., A-28603 (August 16, 1961).

The determination that it is not proper under the law to classify the applied for land for small tract purposes was the result of careful planning based upon field examination and other data assembled by qualified personnel of this Bureau. To the end of promoting the beneficial utilization of the public lands subject to the terms of the Small Tract Act and at the same time to safeguard the public interest in the lands, classification action is taken in conformity with the program of cooperating with State or local governmental agencies where settlement would impose heavy burdens upon such governments which bear the ultimate responsibility to insure orderly development. See 43 CFR 257.2(a)

In the circumstances, the decision appealed from was correct and it is affirmed.

Elizabeth Jean Corfino is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Mrs. Elizabeth Jean Corfino (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MAG

DOCKET FILES

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1963 NOV 18 PM 2 24

In reply refer to:
6.05c
Sacramento 058016

November 12, 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

Certified Mail
Return Receipt Requested

DECISION

James I. Cogle : Small Tract Application

Decision Affirmed

The above-named party has appealed from a decision, dated April 25, 1963, of the land office at Sacramento, California, wherein he was offered a direct sale of the land applied for in the above-identified small tract application, at the appraised value of $1,950 less the amount of $15 paid as advance rental.

The appellant contends, in substance, that the appraised value of $1,950 is quite out of line and that, at the time he filed his application in July of 1958, the Government was charging $20 per acre "plus conditions."

The Small Tract Act, as amended (43 U.S.C., 1958 ed., sec. 682a) authorizes the Secretary of the Interior, in his discretion, to sell lands which he may classify as chiefly valuable for residence, recreation, business or community sites, at prices to be determined by him for such uses. The classification of land for small tract disposal is, therefore, a matter committed wholly to the discretion of the Secretary or his delegate.

The land in question was classified under Small Tract Classification Order No. C3-2 of April 10, 1963, in which it was determined that the tract in question, containing 2.81 acres, would be offered for direct sale to the applicant at the appraised value of $1,950.

With respect to the appraised value of the tract, a careful review of the record indicates that Bureau personnel, in examining the land, ascertained and considered all relevant and material facts bearing on its use value, and came to a considered and informed judgment as to the fair market value of the land. The appraised value was established after considering the prices received from several different sales of comparable lands in the same area. The purchase price fixed for the land was established in accordance with the Department's standard appraisal procedures, is consistent with the facts, and is entirely proper. The price at which the tract may be disposed of must be based on the current fair market value, not the value that land in that area may have been selling for several years ago. Cf. Henry Offe, A-29060 (December 10, 1962). Moreover, where a small tract applicant challenges the validity of the appraised value of the small tract applied for, he has the burden of proving, by submitting substantial, positive evidence, that the appraisal is erroneous or unreasonable. Cf. Daniel Hicken, A-28877 (March 5, 1959). This the appellant has not done.

Accordingly, the decision appealed from is affirmed.

James I. Cogle is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, and the filing fee will amount to $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. James I. Cogle (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
RBO

DOCKET FILES

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1963 DEC 30 AM 10 00

In reply refer to:
6.05c
Los Angeles 0151136

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

December 24, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Marie Louise Enders :: Small Tract Application
:
Appeal Dismissed

Marie Louise Enders has appealed from a decision of the Riverside Land Office, dated October 7, 1963, rejecting her above-identified application. The decision held that the land applied for has been found to be not proper for small tract lease or sale because of the limited demand for home and recreation sites in the area and such small tract lease or sale would tend to promote scattered development of the area, creating land management problems and imposing a heavy burden on the local community for police and fire protection and other services. The decision also stated that there are small tracts available in the adjoining section of land, sufficient to satisfy the present demand.

The appellant does not point out in her appeal wherein the decision appealed from is in error. She states only that the area embracing the tract sought is apparently covered by a grazing lease and that this is not grazing land but merely desert wasteland. The appeal is, in effect, no more than a statement that the appellant disagrees with the decision from which appeal is taken; consequently, the appellant has failed to state reasons for her appeal, as required by the regulation 43 CFR 221.3.

Summary dismissal of an appeal for failure to comply with the above-noted regulation is mandatory. Cf. Duncan Miller, 65 I.D. 290 (1958); Cf. Edward G. Gee, A-30042 (August 26, 1963).

Marie Louise Enders is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 4-1365. If you do not appeal we will close the case and return the record to our State Director for further appropriate action. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mrs. Marie Louise Enders (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
MAG

appeal to Sec
Dismissed A-30269 3-31-64

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
JAN 24 2 49 PM 1964
BUREAU OF
LAND MANAGEMENT

In reply refer to:
6.05c
Los Angeles 086150
January 21, 1964
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

DECISION

Rudolf James Geisler : Small Tract Purchase Application
:
:

Decision Affirmed

Rudolf James Geisler has appealed from a decision of the Land Office at Riverside, California, dated August 12, 1963, notifying him that the 5-acre tract of land embraced in his above-identified small tract purchase application 1/ had been classified for direct sale to applicant Geisler at the appraised value of $6,000. The decision recited the conditions of the classification order and allowed applicant 30 days from the receipt of the decision within which to accept the offered tract and remit the appraised purchase price of the land. The appeal is taken from the appraised value of the land.

The subject land, in Riverside County, is located two to three miles southwest of Palm Desert in the Mountain Small Tract Area called Cahuilla Hills. It is accessible over dirt roads which extend from paved highway No. 74 (Palms to Pines highway), the scenic route from Palm Springs to Hemet and San Diego. The tract is mountainous and offers excellent views. Zoning regulations in the area provide for one single residence per acre. The neighborhood around the subject tract is fully subdivided into five acre tracts and developed for small tract cabins of all varieties, with dirt roads, power and trucked water. A water system is scheduled for development in the near future. The subject neighborhood is within the heavily populated Coachella Valley in the central part of Riverside County two miles southwest of Palm Desert. Paved highways lace the valley and due to the beautiful, natural setting and ideal winter, the region has been and is, today, a mecca for recreation and winter residence. Subdivisions are presently being developed to the east and north of Cahuilla Hills. The present population of Riverside County is 334,000 and it is expected to increase to 895,000 by 1980.

The appellant asserts, in substance, that the appraised value of the land is arbitrary, unjust, unfair, unrealistic, appears to be vindictive and made obsolutely prohibitive to him; that the price of $6,000 is

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1/ The appellant was originally issued a small tract lease for the subject land, effective April 2, 1951, with option to purchase. Upon an appeal to the Secretary, in compliance with the Department's decision, Rudolf James Geisler, A-29117 (January 10, 1963) the current fair market value of the land was determined and the tract offered to the appellant by direct sale.

ridiculous and in complete variance with the value set on adjacent land by qualified and competent appraisers for Riverside County, as shown by copy of a tax bill for the year 1962-63 accompanying his appeal as "Exhibit A", that this adjacent tract is more desirable than the land involved and is appraised at $200 for tax purposes. He further contends that land in the vicinity is not sold at the price set by the Bureau and that he will provide an appraisal by an independent appraiser to show that the value of the land sought is not more than $600 at most. The appellant requests that a qualified appraiser be appointed to make a new appraisal and that he be given an opportunity to purchase "his" land.

The appraisal of land for tax purposes in no way establishes the fair market value of the land. The fair market value of the land sought was determined by qualified Bureau appraisers. In this connection various factors, including the location of the land, its highest and best use, the area and neighborhood data, the market value approach and the comparative sales approach, were carefully considered and evaluated. Based upon the foregoing and the recent comparable sales of several tracts of land in the area ranging from adjusted per acre value of $1,100 to $1,600, and the opinions of local realtors and appraisers as to the value of subject land, it was determined that the fair market value of the land sought is $1,200 per acre, or a total of $6,000 for the tract.

The appraisal of subject land was made in the proper manner and in accordance with the best information available and reflects the fair market value thereof as of June 24, 1963. The Department's program of land conservation does not permit the Bureau to enter into transactions where it is not clearly shown by competent evidence that the Government will receive full value for the land sought, and no transaction will be consummated where, in the course of processing, evidence develops that the Government will not receive full value. See also 43 CFR 257.5(c). Furthermore, it has been consistently ruled by the Department that where an applicant disputes the appraisal of land, the burden is on the applicant to show by positive, substantial evidence that the Bureau's appraisal is in error. Cf. William Mills Otter, A-28780 (August 15, 1962); Daniel C. Hicken, A-27877 (March 5, 1959); Jerry R. Crouse, A-27241 (December 23, 1955). The appellant has not submitted such evidence.

Accordingly, the decision appealed from is affirmed.

Rudolf James Geisler is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Lucien A. Sauvage, Attorney for Appellant (Certified Mail)p
Rudolf James Geisler
Division of Lands and Recreation
Appeals List No. 1
RLE

Appeal to Sec
Ltr. decision A30265 – 5-28-64

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.

JAN 30 10 AM 1964

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 053337

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 24, 1964

Certified Mail
Return Receipt Requested

DECISION

John T. Lindsey : Small Tract Application

Decision Affirmed

John T. Lindsey has appealed from a decision of the Land Office at Sacramento, California, dated September 11, 1963, rejecting his above-identified small tract application for the E½NW¼ Lot 2 sec. 31 (E½NW¼SW¼NW¼ Sec. 31) T. 31 N., R. 5 W., M.D.M. The rejection was for the reason that the topography of the land is unfavorable and legal access to the tract cannot be provided.

The appellant asserts, among other things, that the decision is incorrect because a black-top county road divides Lot 2, sec. 31, and thus, legal access to the lot has already been provided. This lot is, indeed, located within the township of the city of Shasta. A new school has been built within two blocks of the lot and electricity, stores, gas stations and numerous other commercial establishments are available. The appellant requests that a more thorough investigation of the facts be made.

Pursuant to the appellant's request, a further investigation indicates that Mr. Lindsey has misconstrued the description of the land involved. He applied for the E½NW¼SW¼NW¼ sec. 31, T. 31 N., R. 5 W., M.D.M. There is no new school near the tract, nor is there a paved road running through it. From the appeal, it appears that Mr. Lindsey is referring to Lot 2 sec. 31, T. 32 N., R. 5 W., M.D.M. This area is approximately one-half mile southeast of the center of Shasta, is near a new elementary school, and has a paved county access road. Certain maps contained in the record show that Shasta is in a different township and several miles north of the tract described in appellant's application.

Since the land under application is inaccessible and has unfavorable topography, it was properly classified as unsuitable for small tract disposition. Harry Carson et al., A-27289 (May 28, 1956); and the classification will not be disturbed in the absence of positive, substantial evidence that it is erroneous. Peter J. Ernzer, A-28924a (March 18, 1963).

Accordingly, the decision appealed from is affirmed.

John T. Lindsey is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
John T. Lindsey (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
RLE

March 3, 1849

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:
6.05c
Sacramento 051985
Small Tract

FEB 11 2 25 PM 1964
BUREAU OF LAND MANAGEMENT
LAND OFFICE

FEB 10 1964

Certified Mail
Return Receipt Requested

DECISION

Harold J. Blankenheim :
:

Appeal From Decision of
November 20, 1963

Notice of Appeal Filed
December 20, 1963

Appeal Dismissed

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 221.98):

☒ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired (43 CFR 221.3).

☐ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 221.3). The statement of reasons was transmitted to this office after expiration of the period allowed, and the delay in filing cannot be waived. (43 CFR 221.92(b)).

☐ You have not served the adverse party named in the decision appealed from with a copy of ☐ the notice of appeal, and/or ☐ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 221.95. (43 CFR 221.4).

☐ Your appeal does not point out wherein the decision appealed from is believed to be in error and consequently you have failed to state reasons for the appeal, as required by the rules of practice. See Duncan Miller, 65 I.D. 292.

The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Form 4-1364 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 4-1365. 1/ If you do not appeal we will close the case and return the record to our State Director for further appropriate action. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

(Sgd.) Richard J. McCormick
Chief, Branch of Land Appeals
~~Division of Appeals~~

Enclosures 2

1/ The adverse party to be served is:
None

cc: SD (California)
LO (Sacramento)

102172

FEB 11 2 23 PM 1964

John [illegible] right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended, [illegible] enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by preponderating positive and substantial evidence, wherein the decision appealed from [illegible]

Richard J. McCormick
Chief, Branch of Land Appeals
Division [illegible]

Enclosures [illegible]

[illegible] (Certified Mail)
Division of Lands and Recreation
Appeals [illegible]

DOCKET FILES

appeal to Sec 4-13-64

DEPT OF INTERIOR
SACRAMENTO, CAL.

affirmed A-30281
9-28-65
Ltr. dec.

In reply refer to:
6.05c
Sacramento 059695
059696

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

MAR 6 10 00 AM 196

March 2, 1964

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

Certified Mail
Return Receipt Requested

DECISION

Flavious L. Hamer, Sr.
Daisy N. Hamer

Flavious L. Hamer, Jr.
Phyllis Hamer

Small Tract Applications

Decisions Affirmed

The above-named persons have appealed from separate decisions of the Sacramento Land Office, dated October 22, 1963, offering them the right to lease for a period of two years portions of the respective small tracts applied for, pursuant to Classification Order No. C4-24 of September 16, 1963, which classified the land for small tract lease, for residence purposes. The decisions specified the annual rental rate established for the land, allowing the appellants 30 days from receipt of the decisions within which to submit the balance of the rental required for the offered leases.

The appellants filed identical appeals, stating, in substance, that application was made to purchase the tracts of land applied for under the Small Tract Act and that they should be able to purchase the land inasmuch as they have added valuable improvements to the property. The appellants assert that leases as offered could be terminated at the expiration of the two-year terms thereof, leaving them no protection with respect to improvements already on the land.[1]

The appellants have not pointed out in their appeals wherein the decisions appealed from are in error, the assertions contained in their appeals amounting, in effect, to self-serving statements. The occupancy and improvements placed on the land in question by the appellants and other equitable factors were considered prior to the issuance of the decisions from which appeal is taken.

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[1] The records show the appellants cannot qualify as applicants for homesites under the provisions of the Mining Claim Occupancy Act of October 23, 1962 (72 Stat. 1127) inasmuch as there was no subsisting mining claims on the land in question as of the date of the Act, the Hillside # 1 and # 2 Placer Mining Claims having been declared null and void on January 11, 1960, prior to the date of the Act.

The issue involved here is one of proper classification and it is clear from the records that the land offered the appellants under small tract leases was properly classified on a lease only basis under the Small Tract Act, temporarily, pending development of the area for recreational purposes. The classification was based upon a report of field examination of the land conducted June 21, 1963 and additional data assembled by qualified personnel of this Bureau which revealed that it is not in the public interest to transfer title to this public land. The land is within the area recommended for development for recreational purposes in conjunction with establishment of the Auburn Dam and Reservoir, and the highest and most beneficial uses of the land are for public recreation development and watershed protection in connection with the proposed dam and reservoir. The land in question has been proposed for inclusion in a reclamation withdrawal in connection with the reservoir project.

The appellants' presentations on appeal having been considered and found insufficient to constitute a showing that the classification assigned to the land in question is erroneous, the classification will not be disturbed. Joseph M. Schuck, A-28603 (August 16, 1961). Accordingly, the decisions appealed from are affirmed.

The appellants may submit the balance of the specified rental for the tracts to the Sacramento Land Office within 30 days from the receipt of this decision. If they fail to take such action within the time allowed the applications will be finally rejected without further notice.

The pertinent paragraph of the small tract regulations, 43 CFR 257.19(c), provides that upon the termination, cancellation, or expiration of small tract leases, the lessees are allowed a period of 90 days within which to remove their improvements from the land or to make other disposition of them.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers both applications adversely affected by this decision the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. and Mrs. Flavious L. Hamer, Sr. (Certified Mail)
Mr. and Mrs. Flavious L. Hamer, Jr. (Certified Mail)
Hon. Harold T. (Bizz) Johnson, House of Representatives
Division of Lands & Recreation
Division of Withdrawals
Appeals List No. 1
MAG

DOCKET FILES

In reply refer to:
6.05c
Sacramento 053238
053239
056268
056269

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

April 10, 1964

DECISION

Charles J. Hawkins :
Otto Frolic :
Millicent C. Frolič : Small Tract Applications
Stanley Walton :

Applications Rejected

The above-named persons have filed applications under the provisions of the Small Tract Act of June 1, 1938 (43 U.S.C., 1958 ed., secs. 682a-e), as amended, for public land in the $E\frac{1}{2}$ Lot 28 Sec. 7, T. 14 N., R. 10 E., MDM, California.

The Small Tract Act of June 1, 1938, *supra*, authorizes the Secretary of the Interior, in his discretion, to sell or lease land which he may classify as chiefly valuable for small tract purposes. The classification of land for small tract disposal is, therefore, a matter committed wholly to the discretion of the Secretary or his delegate.

The applications involved were previously rejected by the land office at Sacramento, California, by decision dated June 15, 1960. On appeal to the Director, Bureau of Land Management, the land office decision was affirmed by Bureau decision of April 4, 1961. The applicants appealed from the latter decision to the Secretary of the Interior. By departmental decision, *Charles J. Hawkins, et al.*, A-28924 of March 18, 1963, the cases were remanded for reconsideration and clarification of the record. A further study was made and a report prepared as directed by the departmental decision.

Field investigation of the land discloses that it contains a stand of ponderosa pine, managed by the Bureau of Land Management for sustained-yield timber production as a part of 23,150 acres of timbered land in the Placer-El Dorado Program Area. An early sale of 500,000bd. ft. of mature ponderosa pine on the land applied for is contemplated by the Bureau. Furthermore, classification of the land for small tract purposes, would create scattered, isolated development, and would fragment a 223-acre parcel of public land. The fragmentation of the land would complicate its future management.

The land lies between two arms of the reservoir which will be formed by construction of the proposed Auburn Dam by the United States Bureau of Reclamation as part of the Central Valley Project. Because of this proposed development, the United States Fish and Wildlife Service has recommended, in a report dated January, 1963, that the land in question be retained in Federal ownership for multiple use, including recreation. The land is important also, as a habitat for quail, rabbits and other small upland game, and constitutes a winter range for the migratory Sierra deer herds.

We therefore conclude that it is not in the public interest to classify the land in question for lease or sale under the small tract act, and that its most beneficial uses will be realized by continued management in public ownership for timber production, wildlife habitat, and public recreation.

Accordingly, all of the applications herein referred to are rejected. 1/

The Manager of the land office at Sacramento, California, will refund to each applicant any money due him.

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 221.31.

James F. Doyle
Assistant Director

Approved: May 11, 1964

Assistant Secretary of the Interior

DISTRIBUTION:
Mrs. H. S. Gilmore, Attorney for Appellants
Division of Lands and Recreation
Appeals List No. 1
RBO

1/ Under the supervisory authority vested in him, the Director may assume jurisdiction of any matter involving a land case pending in a land office, and dispose of it without waiting for a decision by the local land office. Cf. Angela Matthews Boos, A-28712 (September 21, 1962).

Docket

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

DOCKET FILES

1964 JUN 15 AM 10 00

Small Tract: Application /Option to purchase 2233.33(a)

Where the current fair market value of land has been determined by qualified appraisers, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Frank F. Myers and Myrtle Gizinos, Sacramento 054355, 051916 (June 2, 1964)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 054355
051916

June 2, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Frank F. Myers : Small Tract Applications
Myrtle Gizinos, widow of :
L. P. Gizinos (deceased) :

Decisions Affirmed

The above-named persons have appealed from separate decisions of the Sacramento Land Office, dated January 30 and February 11, 1964, notifying them that, pursuant to their above-noted applications, two parcels of land, the approximate description of which is shown on accompanying enclosures, consisting of 6 acres and 5.3 acres, respectively, had been classified as suitable for lease with option to purchase by Amended Classification Order No. C 3-3. The decisions specified that a lease would issue for a period of two years; that no additional building requirements were necessary as a condition to purchase 1/; that each lessee may exercise the option to purchase the tract at any time subsequent to issuance of lease by filing a proper purchase application and paying the purchase price of the tract; that patent would issue pursuant to preparing and filing a supplemental plat of survey in the land office, correctly describing each tract; and held that the annual lease rental and purchase price would be as follows:

(1) For Mr. Myers, Sacramento 054355, the annual lease rental is $50 and the purchase price of the tract $2,100.

(2) For Mrs. Gizinos, Sacramento 051916, the annual lease rental is $40 and the purchase price of the tract $1,700.

The appeals are from the purchase price of the tracts only. In their similar appeals, the appellants contend that the asking price for the tracts is not fair, or reasonable, but based upon inflated, speculative values. They assert, in substance, that the Bureau has no avowed policy for pricing small tracts in the area; for example, one tract was priced at $100, about $20 per acre, and in an adjoining section the price of $70 per acre was established for small tracts. The appellants submit sketch maps purporting to show that their small tracts are hilly and traversed by two water courses, minimizing the value, and request that the price for each tract be reduced to $100.

1/ Applicants had occupied the lands under mining claims declared null and void in 1958.

The record shows that the low value per acre referred to by the appellants for small tracts occurred several years ago. The price of $20 per acre was established in 1955 and the price of $70 per acre was established in 1957.

The current fair market value of the lands sought by the appellants was determined by qualified Bureau land appraisers. In this connection, various factors, including the location of each tract, its character, shape, access, and the comparative sales approach, were carefully considered and evaluated. Based upon the foregoing and recent comparable sales of several tracts of land in the area ranging from adjusted per acre value of $325 to $1,000, it was determined that the fair market value (November 1, 1963) of the land sought by Mr. Myers was $350/acre x 6 acres = $2,100, and the land sought by Mrs. Gizinos was $320/acre x 5.3 acres = $1,700.

From a review of the record, it is concluded that the price of the lands was made in the proper manner and their fair market value determined through established appraisal procedures. Moreover, where an applicant disputes the price of the land, the burden is upon the applicant to show by positive, substantial evidence that the Bureau's appraisal is in error. Daniel C. Hicken, A-27877 (March 5, 1959). The appellants have not made such a showing.

Accordingly, the decisions appealed from are affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $10. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherei the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION:

Frank F. Myers (Certified Mail)
Myrtle Gizinos (Certified Mail)
Hon. Harold T. Johnson, House of Representatives
Div. of L&M Stds & Tech (4)
Div. of L&M Prog Mgmt (2)
Appeals List No. 1
RLE

DOCKET FILES

Small Tract Act: Application 2233

The filing of a small tract application does not create in the applicant any right or interest in the land covered by the application and entitles him only to have the application considered.

Richard D. Peters, Sacramento 053781 (June 12, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 JUN 29 AM 10 00

In reply refer to;
704
Sacramento 053781

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 12, 1964

Certified Mail
Return Receipt Requested

DECISION

Richard D. Peters : Small Tract Application

Decision Affirmed

Richard D. Peters has appealed from a decision of the Sacramento Land Office, dated March 6, 1964, notifying him that pursuant to his above-identified application a parcel of land (Lots 98 and 119), the approximate description of which is shown on the enclosure, attached to and made part of the decision had been classified as suitable for lease with purchase option by amended Classification Order No. C 3-3. The decision specified that a lease would issue for a period of two years upon payment of the annual lease rental in advance for the entire period; that no additional building requirements were necessary as a condition to purchase; that lessee may exercise the option to purchase the tract at any time subsequent to issuance of lease by filing a proper purchase application and paying the amount of $1,750 for the tract, less any allowable credits; that patent would issue pursuant to preparing and filing a supplemental plat of survey in the land office, correctly describing the land; and allowed the applicant 30 days from the receipt of the decision within which to complete the enclosed amended Forms 4-776 and submit them, together with additional advance lease rental of $195 for the two year period.

On April 3, 1957, Mr. Peters filed his small tract application for the N$\frac{1}{2}$ Lot 36 sec. 32, T. 32 N., R. 5 W., M.D.M., California, now designated as Lots 99 and 100. The land had been occupied for several years by Joseph Shafter prior to invalidation of the Polaris Mining Claim. Mr. Shafter's small tract application (S-047799) for the land was later rejected, Mr. Shafter died April 23, 1957 and his sister and heir, Mary Strode (since deceased), filed small tract application, Sacramento 056007, for the land embracing improvements constructed thereon by her brother. This application was approved, and the land classified for lease only for residential purposes and it was recommended that it be awarded to the heirs of Mrs. Strode. In view of the foregoing, and in light of Mr. Shafter's prior application, the tract immediately to the east of the Strode tract (S-056007), designated as Lots 98 and 119, was offered to Mr. Peters by lease with option to purchase.

The appeal is from the recommended award of the tracts tenatively described as Lots 99 and 100 to the heirs of Mary Strode. The appellant asserts, in substance, that all of the land involved was originally held by Joseph Shafter as a mining claim; that the Shafter small tract application for all of Lot 36 was reduced to cover his improvements and spring on the south half of the lot. The appellant contends that his application, filed prior to the Strode application, should have been given a preference as to the land described therein. The tract offered to him is on the side of a steep hill, could generally be described unsuitable for a homesite, and due to terrain, access to the land is difficult via the proposed right-of-way along the north boundary of the Strode tract. He asserts that access to the Strode land on the west is available at two places. The appellant submits a sketch map purporting to show the two adjoining rectangular tracts and requests that they be divided by a line running east and west and that the north portion of the two tracts be allowed to him and the south portion allowed to the Strode heirs. He claims that such a division would provide each party with a suitable building lot and be a more equitable distribution of the lands involved.

The appellant's sketch map and proposed manner of dividing the tracts are contrary to the various equitable factors taken into consideration at the time the tracts were laid-out, as evidenced from the record and exhibits contained therein. The driveway leading from a paved County road to the Shafter improvements begins at the northwest corner of the tract recommended for award to the Strode heirs. This paved road runs southwesterly, away from the tract, rather than as shown on the sketch map. If the tracts were split as proposed, then access to the Strode tract would have to be along the west boundary of the Peters' tract. There is a large gully, tailings pile, and steep slope to be negotiated through this method of access; and further, because of rough topography, the division of the land as proposed by the appellant would leave the Strode heirs a very small portion of useable land.

The tract offered to the appellant is situated on a north-facing hillside covered by a good stand of manzanita. A moderate sized gully cuts through the tract, southeast to the northwest. The more level parts of the land are located on the northern portion of the tract and, after leveling, could readily be utilized as a homesite. The tract is within 300 feet of the above mentioned paved road. A strip of land, 60 feet wide, leading from the road has been reserved as a right-of-way for access to the property; in addition, the appellant's father owns land immediately north of the property, consequently access to the tract is not difficult.

A careful review of the record indicates that the Bureau personnel, in evaluating the various equitable factors involved, came to considered judgment that each tract should be awarded to the individual as recommended. Moreover, the Bureau's proposed subdivisional plat has been approved by Shasta County, and the supplemental plat is now being prepared by the Bureau's State Engineering Division.

The filing of a small tract application does not create in the applicant any right or interest in the land covered by the application and entitles him only to have the application considered. Joseph M. Schuck et al, A-28603 (August 16, 1961). Betty L. Sherman, A-29901 (February 19, 1964). The appellant has not presented any positive, substantial evidence which requires a change in the decision appealed from; accordingly, the decision is affirmed.

If the appellant wishes to acquire the tract offered to him by lease with option to purchase, he may do so by submitting his amended application to the Sacramento Land Office and paying the additional advance lease rental specified within 30 days from receipt of this decision, failing in which the case will be closed and the partial advance lease rental will be returned to him when the case is returned to the land office.

Richard D. Peters is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

If an appeal is filed the adverse party to be served is:

Mr. Orr M. Chenoweth
Attorney for Estate of Mary A. Strode (Deceased)
P. O. Box 509
Redding, California

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosure

DISTRIBUTION

Richard D. Peters (Certified Mail)
Orr M. Chenoweth, Atty. for Estate of Mary A. Strode (Deceased)
Marguerite Moore, Executrix of the Estate of Mary A. Strode (Deceased)
Div. of L&M Stds & Tech (4)
Div. of L&M Prog Mgmt (2)
Appeals List No. 1
RLE

DOCKET FILES

In case file

Small Tract Act: Classification 2233.2

Lands classified for small tract lease only, are not available for purchase.

Ray J. Ellis, Bueford L. Herren, Sacramento 053423 and 053424 (July 1, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 JUL 16 AM 10 00

In reply refer to:
704
Sacramento 053423
053424

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 1, 1964

Certified Mail
Return Receipt Requested

DECISION

Ray J. Ellis :
Bueford L. Herren : Small Tract Act

Decisions Affirmed

The above-named persons have appealed from separate decisions of the Sacramento Land Office, dated January 30, 1964, offering them Lease-only, 20-year small tract leases and rejecting their applications to purchase the lands for the reason it has been determined that the desired tracts are valuable for public purposes and should, therefore, remain in Federal ownership.

The appellants allege that the tracts should be made available for purchase because they are located outside of any public recreation area.

The land classification report states that the applicants have selected choice sites on year-around streams and in all probability, these lands will be retained in Federal ownership for public use, and, it will not be found to be in the public interest to transfer the title to these lands into private ownership.

A small tract application to purchase land which has been classified as chiefly valuable for public purposes is properly rejected. Cf. John Rovetto, A-28740 (February 8, 1963).

Moreover, the classification of public land is an exercise of discretion which has been delegated to the Secretary of the Interior by law. Thus, a classification determination that the land is suitable for public purposes is well nigh conclusive. Henry S. Morgan et al. v. Stewart L. Udall, U. S. Court of Appeals for the District of Columbia, Case No. 16367, decided July 5, 1962.

Accordingly, since these lands were classified for lease only under the small tract act, they are not available for purchase and the decisions are affirmed.

Ray J. Ellis and Bueford L. Herren are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applicants adversely affected by this decision the total filing fee is $10.00. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosure

DISTRIBUTION

Ray J. Ellis (Certified Mail)
Bueford L. Herren
Hon. Clair Engle, U. S. Senate
Hon. Harold T. (Bizz) Johnson, House of Representatives
Hon. Charles M. Teague, House of Representatives
Div. of L&R S&T
Div. of L&R PM
Appeals List No. 1

DOCKET FILES

In reply refer to:
704
Sacramento 054541

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 AUG 31 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 25, 1964

DECISION

James S. Hedges : Small Tract Lease

Case Remanded

James S. Hedges has appealed from a decision of the Sacramento Land Office, dated March 13, 1964, authorizing him a 10-year lease for residence purposes on a certain 2½ acre tract of land, located in a first form reclamation withdrawal area.

The appellant alleges, among other things:

> ". . . the north line of the south-half of the original five-acre tract . . . runs approximately through the middle of all my improvements including the residence home, . . ."

An inquiry to the Bureau's State Director has confirmed this allegation. It has also been ascertained from our State Office that an alternate small tract may be available and acceptable to Mr. Hedges.

Accordingly, the case is remanded for further consideration.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

DISTRIBUTION
Alvin M. Cibula, Attorney at Law
James S. Hedges
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MHS

DOCKET FILES

Lands

Small Tract Act: Classification 2233.2

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 SEP 3 AM 10 00

Small tract applications are properly rejected as to lands which are within a proposed National Recreation Area, and it is determined that they are chiefly valuable for public recreational purposes.

Walter R. Smith et al., Sacramento 065977 etc. (August 26, 1964)

In reply refer to:
704
Sacramento 065977
065980
065982
065989
August 26, 1964
Certified Mail
Return Receipt Requested

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

DECISION

Walter R. Smith :
Fred C. Sage : Small Tract Applications
Mrs. James R. Smith :
Carroll D. Wright :

Decision Affirmed

The above-named persons have separately appealed from a decision of the Sacramento Land Office, dated June 4, 1964, rejecting their respective applications filed under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1958 ed. sec. 682a).

The four applications, among others, were first rejected by Land Office decision of October 20, 1961. Upon appeal to the Director, that decision was vacated by Bureau decision of February 28, 1962 and the cases were remanded to the Land Office Manager for further individual consideration and appropriate action.

In compliance with the Bureau decision of February 28, 1962, a further field examination of the lands was made 1/, from which it was determined that it would not be proper to classify the lands for small tract lease or sale because: (1) All of the described lands are included within the Whiskeytown Unit of the proposed Whiskeytown-Shasta Trinity National Recreation Area; (2) title transfer of various segments of the area to individuals for small tract development would not be in the public interest, in view of the proposed recreation use; and (3) in addition, the lands described in applications 065977 and 065982 would be partially inundated by the proposed Kanaka Reservoir to be constructed by the State of California, and the land included in application 065980 is rough and hilly, creating a subdivision problem for provision of County services.

In their present appeals, three of the appellants assert essentially the same contentions made in their original appeals, and all of them imply they do not understand the real reason for rejecting their applications. The appellant in Sacramento 065982 (by her husband) argues that the proposed recreation area and proposed reservoir are not a proper basis for rejecting her application because the mere proposals may never become existent. She believes that

---

1/ The report of the field examination is contained in case file, Sacramento 048566.

because her husband is a disabled veteran, she has a preference right to the tract and suggests that her application be suspended until all proposals mentioned become a reality and plans for the area are completed. The appellant in Sacramento 065977 states that if the tract he applied for is not suitable for a homesite, he would like to exchange it for a more suitable site within the same area. The appellant in Sacramento 065980 asserts that the land he applied for contains many feasible places for building sites and the luxury of County services are not necessary. He alleges that his application was not given individual consideration and requests that it be allowed.

A careful review of the records discloses that Bureau personnel, in examining the lands involved in these appeals, ascertained all of the relevant facts and came to a considered and sound judgment that the lands are valuable for recreational purposes for the reasons set forth above. In the circumstances, neither may a small tract application be suspended nor an exchange made for other small tracts within the area. The preference rights accorded to veterans in connection with applications under the Small Tract Act, terminated by operation of law on September 27, 1959. See 43 U.S.C. 282.

Departmental regulations (43 CFR 2410.0-6) provide that land will not be classified for disposition where the potential demand for the land for public purposes require its retention in Federal ownership. In this respect the Department has ruled that small tract applications are properly rejected as to lands which are chiefly valuable for public recreational purposes. John Rovetto, A-28740 (February 8, 1963).

The decision appealed from is affirmed.

Each of above named individuals is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $20. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. [illegible]
Acting Chief
Office of Appeals and Hearings

Enclosure

DISTRIBUTION

Walter R. Smith (Certified Mail)
Fred C. Sage (Certified Mail)
Mrs. James R. Smith (Certified Mail)
Carroll D. Wright (Certified Mail)
Div. of L&M S&T(4)
Div. of L&M PM (2)
Appeals List No. 1
RLE

DOCKET FILES

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1965 APR 8 PM 2 27

Small Tract Act: Classification 2233.2

Land which is classified for small tract lease only is not available for purchase.

Donna L. (Richardson) Search, Sacramento 058045 (March 18, 1965)

In reply refer to:
704
Sacramento 058045

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

March 18, 1965

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Donna L. (Richardson) Search : Small Tract Application
:
:

Decision Affirmed

Donna L. (Richardson) Search has appealed from a decision of the Land Office at Sacramento, California, dated December 23, 1964, offering her a lease only on 2.5 acres of land pursuant to her above-identified small tract application 1/. The land applied for has been classified for lease only, for residence purposes, for the benefit of the applicant, by Classification Order No. C4-27 of December 14, 1964.

The decision held that a purchase option was not being offered for the reason that it had been determined the land sought should be retained in Federal ownership for management of timber resources.

The decision also recited that the lease was authorized for a period of five years at an annual rental of $180, payable annually in advance; that the applicant paid $15 advance rental with the application and was required to submit $165 additional rental. The applicant was allowed 30 days from receipt of the decision in which to complete both copies of enclosed lease forms designated as amended Forms 4-776 and Additional Lease Terms, and to return them to the Land Office together with the required rental payment.

In her appeal, the appellant objects to a lease only; she requests that she be permitted to purchase the land in question. The appellant asserts in substance, that she and her first husband originally occupied

---

1/ The appellant filed small tract application, in her own name, on March 25, 1960, as successor to an application previously filed by Millard Richardson, her deceased husband.

the property as a mining claim and thereafter applied for a portion of the claim under the Small Tract Law; that she has used the land applied for as her home and residence for eight years, spent considerable money on improvements, and that she should be allowed to purchase the tract to secure the benefits of her labors and money. The appellant admits that there is timber on the property. However, she argues that the land sought is part of an isolated 40 acre tract of public land and any timber on the tract sought could be recouped through the purchase price. She states that the decision appealed from reclassified the land for lease only, and she requests that the decision be reversed and her application for the purchase of the land be allowed.

The appellant's application was for lease or purchase of the tract, depending upon the classification. The decision did not reclassify the land as the appellant claims. The record shows that subject land was classified for the first time by Classification Order No. C4-27. The record further shows that the tract has a good stand of young pine and trees ranging from 12 to 24 inches d.b.h., and rates high for timber production. The Bureau's District Manager has recommended that the tract be retained in Federal ownership for timber production. In addition, the land is an excellent wildlife habitat and supports good populations of deer, quail and rabbits.

The Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682a) authorizes the Secretary of the Interior, in his discretion, to classify certain classes of public lands for lease or sale, or for lease with option to purchase, and under such rules and regulations as he may prescribe. Moreover, the Department has held that it is proper to refuse to classify land for disposition under the Small Tract Act where the land is needed for timber management programs and is also valuable for wild game. Clarence J. Heidbreder, A-28841 (July 26, 1962).

Based upon the considerations discussed above, the land in question has been classified for lease only, for the applicant's accomodation, and therefore the land is not available for purchase. Accordingly, the decision is affirmed.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosure

DISTRIBUTION:
Orrin K. Airola, Attorney for Appellant (Certified Mail)
Donna L. (Richardson) Search
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RLE

appeal to Sec.
affirmed as modified
A-30482 1-18-66

DOCKET FILES

5T

Appeals Procedure: Generally 1840

Where an offer to lease under the Small Tract Act is the only subject of a decision and the offer is no longer available, an appeal from that decision will be dismissed.

Lawrence L. and Doris R. Lyons, Sacramento 053681 (April 13, 1965)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 APR 23 AM 10 00

In reply refer to:
704
Sacramento 053681

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

April 13, 1965

Certified Mail
Return Receipt Requested

DECISION

Lawrence L. and Doris R. Lyons : Small Tract Application

Appeal Dismissed

Lawrence L. and Doris R. Lyons have filed a purported "appeal" from a decision of the Land Office at Sacramento, California, dated October 22, 1964. That decision offered Earl F. Ford a lease on 1.25 acres of public land as a business site, pursuant to his above identified small tract application, and allowed him 30 days from receipt of the decision within which to pay in advance a specified rental for the first year of the proposed lease for a term of 12 years.

This offer was made to legalize the occupancy of a store and gas station which overlaps slightly onto public lands under the administration of this Bureau.

The record shows that Mr. Ford did not comply with the terms of the Bureau's offer and that his time to do so has expired. The record also shows that the Lyons have succeeded to the ownership rights of Mr. Ford to the store and gas station.

As the offer made to Mr. Ford is no longer available to him, and as the offer was the only subject of the decision appealed from, the appeal is hereby dismissed.

However, this decision does not preclude the filing by Mr. and Mrs. Lyons of a small tract application for the land in question pursuant to Accommodation Classification No. C-3-18, Amendment No. 1, dated March 9, 1965.

Lawrence L. and Doris R. Lyons are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION
Lawrence L. and Doris R. Lyons (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MHS

Small Tract Act: Applicants--Qualifications; restrictions 2233.0-6

Where on appeal a small tract applicant submits the statement of citizenship and holdings required of him, and where he has previously been declared high bidder and purchaser of the tract of land in question subject to the filing of such document, the case will be remanded for further processing.

Robert R. Green, Riverside 06401 (May 17, 1965)

In reply refer to:
704
Riverside 06401

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

May 17, 1965

DECISION

Robert R. Green : Small Tract
:
:
Case Remanded

Robert R. Green has appealed from a decision of the District and Land Office at Riverside, California, dated April 7, 1965. The decision vacated a sale of a 5-acre tract to Mr. Green because he failed, after due notice, to submit a statement of his citizenship and holdings in accordance with the requirements of the Small Tract Act. He had previously been declared the high bidder and purchaser of the tract at a public auction.

With his appeal, Mr. Green has submitted the required statement as to his citizenship and holdings. In view thereof, the Acting Manager of the District and Land Office has requested that this case be remanded to that office for further processing.

Accordingly, the case is remanded to the District and Land Office at Riverside, through the Bureau's State Director for California, for appropriate action.

James F. Doyle
Chief, Office of Appeals
and Hearings

DISTRIBUTION:
Mr. Robert R. Green
SD (California) w/case record Riverside 06401
D&LO (Riverside)
Div. of L&M S&T (4)
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OPD (1)
Appeals List No. 1
MAG

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DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1965 JUL 12 AM 10 00

Small Tract Act: Sales 2233.3-3

Where subsequent to the filing of an appeal in connection with an application to purchase under the Small Tract Act the Bureau's State Director advises that the land sought has been deleted from a proposed reclamation withdrawal and requests that the case file be returned in order that an offer of fee title transfer may be made to the appellant, the case will be remanded for further appropriate action.

Irene Escura, Sacramento 047200 (June 30, 1965)

In reply refer to:
704
Sacramento 047200

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

June 30, 1965

DECISION

Irene Escura : Small Tract Application
:
:

Case Remanded

Irene Escura has appealed from a decision of the Land Office at Sacramento, California, dated December 23, 1964, offering her a small tract lease under her above-identified application, Sacramento 047200.

The record discloses that the classification of the applied for tract for lease only was an accommodation type classification for the benefit of the appellant-occupant. It was to sanction her occupancy, on an interim basis, pending a final determination of the necessity of retaining the land in withdrawn status pursuant to a proposed withdrawal, Sacramento 065037, filed by the Bureau of Reclamation. See 43 CFR 2311.1-2.

The Bureau's State Director for California has advised by memorandum of June 22, 1965, that the Bureau of Reclamation has requested that the tract of land in question be deleted from the proposed withdrawal Sacramento 065037, and that the Sacramento Land Office records have been noted accordingly. He therefore requests that the case be remanded in order that an offer of fee title transfer may be made to the appellant.

No objection appearing, the case is remanded to the Land Office at Sacramento, through the Bureau's State Director for California, for further appropriate action.

James F. Doyle
Chief, Office of Appeals
and Hearings

DISTRIBUTION:
Mr. Alvin M. Cibula, Attorney for Appellant
Mrs. Irene Escura
SD (California) w/case record Sacramento 047200
LO (Sacramento)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
Appeals List No. 1
MAG

Appeals Procedure: Generally [illegible]

A case on appeal to the Director, Bureau of Land Management will be remanded, when the Bureau's State Director advises, in effect, that the decision appealed from is faulty and he requests that the case be returned to his office.

[illegible], Sacramento [illegible] (March 30, 1962)

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Appeals Procedure: Generally 1840

A case on appeal to the Director, Bureau of Land Management will be remanded, when the Bureau's State Director advises, in effect, that the decision appealed from is faulty and he requests that the case be returned to his office.

June W. Madrid, Sacramento 047131 (March 30, 1967)

In reply refer to:
704
Sacramento 047131

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

March 30, 1967

DECISION

June W. Madrid : Small Tract Lease
:
:

Decision Reversed
Case Remanded

June W. Madrid has appealed from a decision of the Sacramento Land Office, dated April 11, 1966, offering her a new three-year lease-only small tract lease for a one-acre part of an approximately five-acre tract of land previously leased to her pursuant to an earlier classification order.

A memorandum in the case file states that the acreage in the lease was reduced to one acre in order to lower the rental charges to a minimum. However, if Mrs. Madrid so requests, it is agreeable to continue the lease only small tract for the entire 4.59 acres of land.

A memorandum from the Bureau's State Director in California, dated March 16, 1967, recommends that Mrs. Madrid be given a new three-year lease with the same lease terms that are contained in her recently expired lease and that the case be remanded.

Accordingly, the decision is reversed and the case is remanded for further processing.

Newton Frishberg

Chief, Office of Appeals
and Hearings

DISTRIBUTION:
Gilmore & Gilmore
Mrs. June W. Madrid
Hon. Harold T. Johnson, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

Small Tracts: Generally 2233

When land has been classified as unsuitable for small tract development, the classification, in the absence of an error which appears on the face of the record, will not be disturbed unless positive and substantial evidence is adduced to show that the classification is erroneous.

Kenneth M. Smith, Los Angeles 0133901 (July 20, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 AUG 3 AM 10 00

In reply refer to:
704
Los Angeles 0133901

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 20, 1967

Certified Mail
Return Receipt Requested

DECISION

Kenneth M. Smith : Small Tract Application

Decision Affirmed

Kenneth M. Smith has appealed from a decision of the Riverside District and Land Office, dated February 3, 1967, which rejected his application for lease or sale of a small tract under the Act of June 1, 1938 (52 Stat. 609) as amended by the Act of June 8, 1954 (68 Stat. 239, 43 U.S.C. 682a). Small Tract Order Number 609, classifying the applied-for lands for lease or sale of small tracts, was revoked, effective January 12, 1967.

The appellant has taken exception to the principal reasons for the revocation of the small tract classification, stating in effect that (1) the lands are more valuable for small tract development than for multiple use, (2) the classification of not only these lands, but any lands in this area for small tracts would impose a heavy burden upon the local authorities for fire and police protection, and (3) the change in classification defeats the intent and purpose of the Small Tract Act.

The tract of land in question is located approximately 3 miles south of the City of Ridgecrest in Kern County, California. It is part of the BLM's Ridgecrest Planning Unit. Record data concerning the management of lands in this unit indicates that, except for scattered parcels, the lands should be retained in public ownership for multiple use management.

Historically, these lands have proven valuable for both grazing and open space recreation. The applied-for tract lies within the limits of the Cantil Grazing Unit where the lands are used by a number of sheep operators who graze their sheep in the spring of favorable years. The tract is also part of one of the largest blocks of public land, within easy access of the Los Angeles Basin, that is valuable for extensive open space recreation such as hiking and rock collection.

Since the lands are so far outside the perimeter of the City of Ridgecrest, the Bureau closely coordinated its classification reevaluation with Kern County. The county indicated that this particular tract was not currently needed for urban expansion and that there are many other privately owned

subdivision lots situated closer to the City of Ridgecrest which are available for development. In a letter of October 19, 1966, the Kern County Planning Director stated:

> "At the present time there are many vacant subdivision lots within the Ridgecrest area. . . . Those subdivisions lying outside the City of Ridgecrest are without municipal services such as water mains, sewers, street lighting and the like. Based on the above, it is the Planning Staff's considered opinion that this land not be transferred at this time. . . ."

Kern County is the agency which would ultimately be responsible for insuring orderly development and police and fire protection in this area. Departmental regulations, 43 CFR 2233.0-2, provide that small tracts will not be leased or sold where it would impose heavy burdens upon local government for roads; schools; police, health, and fire protection; and other facilities. In view of the county's position that allowance of this application would not be desirable, the Land Office properly rejected this small tract application.

The Department has ruled that the classification of land as suitable for disposition under the Small Tract Act does not preclude a subsequent cancellation of that classification order when a different classification is found to be in the public interest. Cecil W. Hinshaw, A-30006 (July 23, 1964). The evidence contained in the case record clearly supports the new classification determination. In contrast, the appellant's arguments are nothing more than unsupported statements. Although the appellant disagrees with this determination, he has failed to show by any substantial and positive evidence that the classification is erroneous. Therefore, the classification will not be disturbed. Joseph M. Schuck et al., A-28603 (August 16, 1961).

Accordingly, the decision is affirmed.

Kenneth M. Smith is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Kenneth M. Smith (Certified Mail)
Hon. Bob Mathias, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
NKS

Appeals Procedure: Standing to Appeal 18020

Where the decision appealed from is not adverse to the appellant, it will be affirmed and the case will be remanded.

Eddie T. Tyler, Sacramento 042526 (March 6, 1985)

Appeals Procedure: Standing to Appeal 1842.2

Where the decision appealed from is not adverse to the appellant, it will be affirmed and the case will be remanded.

Ralph D. Ivins, Sacramento 062926 (March 5, 1968)

DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 MAR 13 AM 10 00

In reply refer to:
704
Sacramento 062926

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

March 5, 1968

DECISION

Ralph D. Ivins : Small Tract
:
:

Decision Affirmed
Case Remanded

Ralph D. Ivins has appealed from a decision of the Sacramento Land Office, dated January 8, 1968, authorizing him to receive a new "lease only" small tract lease for a period of 6 years. The decision states, in pertinent part, however, that:

> * * *The lease will not contain a purchase option. Upon completion of land surveys in the area, the lessee will be given the option to purchase * * * .

Mr. Ivins has appealed because:

> * * *the lease is for six years without the right to purchase during that period* * * .

It is clear from the quoted portion of the Land Office decision that Mr. Ivins is not being denied the right to purchase the subject small tract. Mr. Ivins right to purchase is merely being suspended until the land surveys have been completed. The mere fact that the lease is silent on the matter of purchase will in no way deprive Mr. Ivins of his right to purchase the small tract after the survey has been accomplished.

Accordingly, since the Land Office decision is not adverse to Mr. Ivins, it is affirmed and the case is remanded.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

DISTRIBUTION:
Ralph D. Ivins
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

Small Tract Act: Sales 2233.3-3

Where the appraisal of a small tract, based on sales of nearby and similar lands, has failed to give full consideration to all relevant factors, it must be vacated and the case record remanded for a new appraisal.

Alberta C. Fry, Sacramento 056431 **(March 11, 1970)**

In reply refer to:
141
Sacramento 056431

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

March 11, 1970

DECISION

Alberta C. Fry : Small Tract Sale
:

Decision Set Aside - Case Remanded

By decision of December 1, 1969, the Sacramento Land Office required applicant Alberta C. Fry to pay the sum of $8,000 as the appraised fair market value of lot 9 sec. 10, T. 19 N., R. 6 E. Mount Diablo Meridian, California, which had been classified for direct sale to the applicant. Mrs. Fry has filed an appeal from this decision contending that the appraisal is far in excess of the fair market value of the tract, that the appraisal failed to take into consideration the rough and steep terrain, the fact that the land has no direct access to a highway, and that the northern portion of the tract, upon which the cabin is located, is also steep with only a small flatter portion in the immediate vicinity of the cabin.

When the appraised value of land applied for under the Small Tract Act is based on sales of nearby and similar lands and full consideration of all relevant factors, the appraisal will not be disturbed unless the record shows the purchase price is excessive or unreasonable. Leon E. Reynaud, New Mexico 065443 (April 20, 1960).

In light of the data presented on appeal, the appraisal in this case leaves several questions unanswered. The appraiser has based his comparison on the relative acreages between lot 9 and the sales used. Considering the highest and best use of the land for recreational homesites, the number of homesites that could be developed on the tracts would be more important than the relative sizes of the tracts themselves. If the subject tract can accomodate only one homesite, it would appear to have considerably less value than if it could be subdivided into several homesites.

As indicated in the appeal, the present road between Old Forbestown Road and the land at issue crosses privately-owned land. In view of the long occupancy of lot 9 a right-of-way easement may have been established under local law. Since lot 9 is not the only public land in this section, other legal access may possibly be developed. Further consideration must therefore be given the legality of access. The relative value of physical access and the possibilities of potential for commercial use in other sales as compared to the subject tract must also be considered.

Accordingly, the decision of December 1, 1969, is set aside and the case record is remanded to the Sacramento office for a new appraisal.

Edward H. Stuebing

Acting Chief, Office of Appeals
and Hearings

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Mrs. Alberta C. Fry
300
200
Appeals List No. 1